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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 70

AMERICAN FEDERATION OF LABOR, INTERNA-
TIONAL LONGSHOREMEN'S ASSOCIATION AND
PACIFIC COAST DISTRICT INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION No. 38, PETI-
TIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MAY 26, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

SUPREME COURT OF THE UNITED STATES

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{fol. 1}

[File endorsement omitted]

**IN UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA**

APRIL TERM, 1938

No. 7257

**AMERICAN FEDERATION OF LABOR, INTERNATIONAL LONGSHORE-
MEN'S ASSOCIATION, and PACIFIC COAST DISTRICT INTERNA-
TIONAL LONGSHOREMEN'S ASSOCIATION No. 38, Petitioners,
vs.**

NATIONAL LABOR RELATIONS BOARD, Respondent

**PETITION TO REVIEW AND SET ASIDE ORDER OF NATIONAL LABOR
RELATIONS BOARD DATED JUNE 21ST, 1938—Filed Septem-
ber 29, 1938**

The petition of American Federation of Labor, Inter-
national Longshoremen's Association, and Pacific Coast
District International Longshoremen's Association No. 38,
respectfully shows:

1. That petitioner, American Federation of Labor is a
national labor organization; that petitioner, International
Longshoremen's Association hereinafter called I. L. A. is
a labor organization affiliated with the said American Fed-
eration of Labor admitting to membership all members en-
gaged in longshore work; that petitioner, Pacific Coast Dis-
[fol. 2] trict International Longshoremen's Association
Local 38, hereinafter called Local 38, is a labor organiza-
tion affiliated with the International Longshoremen's As-
sociation, and has jurisdiction over all Pacific Coast Ports
North of the Republic of Mexico, and consists of various
locals having jurisdiction over one or more ports on the
Pacific Coast. That all said petitioners are labor organiza-
tions within the meaning of the term as used in the Na-
tional Labor Relations Act.

2. That the respondent, Labor Relations Board, herein-
after called the Board, is a governmental agency organ-
ized under an Act of Congress known as the National
Labor Relations Act, 49 Stat. 449, hereinafter called the
Act.

3. That the International Longshoremen and Warehouse-
men's Union District No. 1, hereinafter called the

I. L. W. U., is a labor organization affiliated with the I. L. W. U., an affiliate of the Committee for Industrial Organization, admitting to membership all workers engaged in longshore work; that said International Longshoremen's and Warehousemen's Union District No. 1, has jurisdiction over the ports of Alaska, British Columbia, California, Oregon, Washington and the Hawaiian Islands, and consists of locals having jurisdiction over one or more ports.

4. That the Ship Owners Association of the Pacific Coast, Waterfront Employers Association of the Pacific Coast, Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, and Waterfront Employers Association of Southern California, are associations of employers engaged [fol. 3] in the transportation or handling of water-borne cargo on the Pacific Coast of the United States.

5. That between January 10, 1938, and January 30, 1938, and earlier, petitions were filed by the various I. L. W. U. Locals in California requesting an investigation and certification of representatives under Section 9 (c) of the National Labor Relations Act and requesting hearings to determine the appropriate unit of the employees involved; that pursuant to said Act said petitions were consolidated for the purpose of hearing under a case entitled Case No. R-638 and R-572; that hearings on said case were held pursuant to notice in San Francisco, California, from February 15th through February 25th, 1938, inclusive, and on March 25th and 26th, 1938; in Los Angeles, California, on March 7th, 1938; in San Pedro, California, from March 7th, 1938, through March 19th, 1938; in Seattle, Washington, from March 14th through March 17th, 1938, inclusive; and in Portland, Oregon, on March 18th, 1938; before a trial examiner duly designated by the Board, at which witnesses were heard and testimony was taken.

6. That petitioners pursuant to permission appeared at such hearings and were represented thereat, and that all other parties above named participated in and were present at such hearings; that following said hearings the record was transferred to the National Labor Relations Board at Washington, D. C., and that thereafter on the 21st day of June, 1938, said Board filed its findings of fact and con-

clusions of law and order of certification, a copy of which is attached hereto and marked "Exhibit A" and made a [fol. 4] part hereof, in which the said Board determined that the appropriate unit consisted of all the workers doing longshore work for the companies which are members of the said various respondent associations of employers and certified the I. L. W. U. District No. 1 as the exclusive representative of all such workers.

7. That in said decision and order the said Board found that the petitioners represented a majority of the workers doing longshore work employed by the various employer members of the said association in a number of cities and among a number of employers; that said Board none the less decided, held and ordered that the appropriate unit of employees employed by various employers of the various workers in the various ports of the West Coast of the United States consisted of all employees doing longshore work for the employer Associations in the ports on the West Coast of the United States, and certified the said I. L. W. U. District No. 1, as the sole bargaining agent for all such employees; that as a result of said decision and order those employees who are members of the petitioners are obliged to become members of or deal exclusively through the said I. L. W. U. District No. 1, or not at all, and are unable to deal with their respective employers through representatives of their own choosing even though they constitute a majority of said employees of said individual employers.

8. That on August 15th, 1938, said petitioners filed certain objections and exceptions to the said decision and order of certification, a copy of which is attached hereto marked "Exhibit B" and made a part hereof, in which [fol. 5] various points of law were raised; that on the 27th day of August, 1938, said Board entered an order denying said objections, exceptions and motions of the petitioners and sustaining its previous decision and order of certification; that a copy of said order is attached hereto marked "Exhibit C", and made a part hereof.

9. That as a result of said decision and order of certification the said petitioners although selected by a majority of the employees of their respective employers, as their bargaining representatives in accordance with law, are de-

4
prived of their status as the collective bargaining agent, and are thereby aggrieved by the said decision and order of certification.

10. That said order of certification is contrary to law and contrary to the facts as set forth in the said Board's findings of fact in the above entitled matter, and further that such certification is contrary to the spirit, purpose and intent of the National Labor Relations Act in that said National Labor Relations Act does not contemplate and does not lawfully permit the designation by the Board of an employee unit constituting all the employees of different employers in different and distant geographical districts of the United States.

11. That petitioners have been denied rights accorded them under the National Labor Relations Act, particularly under Section 7 thereof; that petitioners have been denied such rights for the reason that the Board's findings of fact herein state that certain distinct groups of employees are [fol. 6] members of the separate unions, in different geographical locations, and that the members in each of such unions constitute a majority of the employees employed in the longshore work in the respective cities where such unions are located; that such unions are affiliated with the American Federation of Labor and constitute the petitioners herein; that such majority of members in each such union has constituted each such union as its bargaining representative to negotiate with respective employers concerning wages, hours and working conditions; that the order of certification unlawfully denies to the petitioners the right of self-organization and representation as hereinbefore set forth.

12. That for the foregoing reasons the said order of certification of the said Board is void and of no effect; and furthermore, that said order of certification constitutes an unconstitutional deprivation of property and other valuable rights to the American Federation of Labor and its affiliated unions and the members thereof involved in the above entitled matter, who are petitioners herein.

13. That petitioners have exhausted their remedy before said Board and have no other way of preserving and protecting their rights except by appeal to this Court; that said order of certification is as to the petitioners a final

order; that this Court has jurisdiction to hear this appeal from said order by virtue of said National Labor Relations Act; Section 10 (f) thereof.

[fol. 7] Wherefore, your petitioners pray:

(a) That a certified copy hereof be forthwith served according to law, upon the respondents herein named;

(b) That the respondent, National Labor Relations Board may be required in conformity with law, to certify to this Honorable Court a transcript of the record in the proceedings wherein said order was entered, including the testimony, evidence and exhibits taken, the pleadings, the findings, conclusions and order of said respondent;

(c) That the said proceedings, findings, conclusions and order be reviewed by this Honorable Court; that the said order of certification insofar as it attempts to establish a geographical district of many employers in the aggregate as the basis of determining the bargaining agent for longshore workers on the Pacific Coast and denies to the majority of employees employed by a single employer the right to set up the petitioner as the exclusive representative of such employees doing longshore work on the Pacific Coast to be set aside, vacated and annulled, and that said decision be reversed, and said order of certification be set aside;

(d) That this Honorable Court exercise its jurisdiction over the parties and subject matter of this petition and grant to the petitioner such other and further relief in the premises as the rights and equities of the cause may require.

(e) And for such other and further relief in the premises as to the Court may seem meet.

Dated: — — —.

Joseph A. Padway, Counsel for Petitioners, 321
Tower Building, 14th & K Streets, N. W., Wash-
ington, D. C.

Copy received Sept. 29, 1938.

(Signed) Robert B. Watts, Assoc.-General Counsel,
N. L. R. B.

[fol. 8] *Duly sworn to by William Green. Jurat omitted in printing.*

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of SHIPOWNERS' ASSOCIATION OF THE PACIFIC COAST, WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST, THE WATERFRONT EMPLOYERS OF SEATTLE, THE WATERFRONT EMPLOYERS OF PORTLAND, THE WATERFRONT EMPLOYERS ASSOCIATION OF SAN FRANCISCO, THE WATERFRONT EMPLOYERS ASSOCIATION OF SOUTHERN CALIFORNIA, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, DISTRICT No. 1

In the Matter of WATERFRONT EMPLOYERS ASSOCIATION OF SOUTHERN CALIFORNIA and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 1-13

Cases Nos. R-638 and R-572, respectively.—Decided June 21, 1938

Longshoremen Industry—Employer: companies functioning through associations—*Investigation of Representatives:* controversy concerning representation of employees; controversy concerning appropriate unit; employer's refusal to grant recognition of union; necessity for designation of proper collective bargaining agency to facilitate negotiations for next contract period—*Contract—Unit Appropriate for Collective Bargaining:* workers who do the longshore work in the Pacific Coast ports of the United States for the companies which are members of the employer associations herein involved; coast-wide; "employer" unit; meaning of; history of employer organization; organization of companies on coast basis; functioning of companies with respect to labor relations; history of collective bargaining relations with employer and in industry; failure of bargaining attempted on a local scale, successful bargaining on coast basis, present coast-wide agreement; desires of employees: visiting privileges, absorption of unemployed members; basic similarity of working rules; walking bosses excluded; differences in meaning of subclassifications of longshoremen in various ports—*Representatives:* proof of choice; comparison of employee lists and union cards—*Certification of Representatives:* upon proof of majority representation.

Mr. Bertram Edises, for the Board.

Gladstein, Grossman & Margolis, by Mr. Richard Gladstein and Mr. Aubrey Grossman, of San Francisco, Calif., for I. L. W. U., I. L. W. U. District No. 1, and I. L. W. U. Local 1-13.

Mr. Carey McWilliams, of Los Angeles, Calif., for I. L. W. U. Local 1-13.

Mr. Charles J. Katz, Mr. John C. Packard, of Los Angeles, Calif., and Mr. W. J. Hull, of Long Beach, Calif., for I. L. A. Local 38-82, Inc.¹

¹ Katz and Packard were permitted to represent those interests in I. L. A. Local 38-82, Inc., which they represented in the proceedings in the Superior Court of the State of California, in and for the County of Los Angeles, entitled *Walker v. International Longshoremen's Association, Local 38-82, Inc.*, Number 420356. Hull was permitted to represent the adverse interests in I. L. A. Local 38-82, Inc.

Mr. Gregory Harrison, of San Francisco, Calif., for Shipowners' Association of the Pacific Coast, and members thereof listed in Appendix "B"; Waterfront Employers Association of the Pacific Coast, and members thereof listed in Appendix "C"; Waterfront Employers of Seattle, and members thereof listed in Appendix "D"; Waterfront Employers of Portland, and members thereof listed in Appendix "E"; Waterfront Employers Association of San Francisco, and members thereof listed in Appendix "F"; and Waterfront Employers Association of Southern California, and members thereof listed in Appendix "G".

Mr. A. H. Petersen, of Gardena, Calif., for the A. F. of L.

Mr. James F. Kennedy and *Mr. Lawrence Mallen*, of San Francisco, Calif., for I. L. A. Local 38-79.

Mr. Milton D. Sapiro, of San Francisco, Calif., for I. L. A. Local 38-79.

Mr. L. B. Sulgrove, of Tacoma, Wash., for I. L. A., I. L. A. Local 38-97, I. L. A. Local 38-89, I. L. A. Local 38-86, and I. L. A. Local 38-83.

Mr. Samuel DeGroot, of Los Angeles, Calif., for I. L. A. Local 38-82, Inc.

Mr. Joseph L. Searles, of San Francisco, Calif., for I. L. A. Local 38-79.

Mr. Martin Kurasch, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On January 29, 1938, after a hearing, the National Labor Relations Board, herein called the Board, issued a Decision and Order in a proceeding it had entitled Case No. XXI-R-325,² in which it remanded the proceedings for purposes of further hearing.³ That proceeding had been based upon a petition filed by International Longshoremen's and Warehousemen's Union,⁴ Local 1-13 alleging that a question affecting commerce had arisen concerning the representation of longshoremen of Waterfront Employers Association of Southern California in Los Angeles and Long Beach harbor and requesting an investigation and certification of representatives pursuant to Sec-

² Upon being transferred to the Board the designation of the case was changed to Case No. R-572.

³ 4 N. L. R. B. 1109. That Decision contains a detailed statement of the pleadings and proceedings prior thereto.

⁴ International Longshoremen's and Warehousemen's Union is herein called I. L. W. U.

tion 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On January 10, 1938, I. L. W. U. Local 1-46 filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of longshoremen employed by Waterfront Employers Association of Southern California in the Santa Barbara and Ventura harbor area and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. This proceeding was entitled Case No. XXI-R-421.

On January 19, 1938, I. L. W. U., District No. 1, filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of workers employed at longshore work in all the Pacific Coast ports of the United States. This proceeding was entitled Case No. XX-R-196.

On January 29, 1938, the Board issued, together with its Decision and Order in Case No. XXI-R-325, an Order Transferring Proceedings from the Twenty-first Region to the Twentieth Region, Consolidating and Directing Investigation and Hearing, by which Cases Nos. XXI-R-421 and XXI-R-325 were, in accordance with Article II, Section 37 (c), of National Labor Relations Board Rules and Regulations—Series 1, as amended, herein called the Rules and Regulations, transferred to and continued in the Twentieth Region. The proceedings transferred, and Case No. XX-R-196, were, in accordance with Article III, Section 10 (c) (a), of the Rules and Regulations, consolidated for purposes of hearing, and the Regional Director for the Twentieth Region was, pursuant to Section 9 (c) of the Act and Article III, Section 3, of the Rules and Regulations, ordered to conduct an investigation and to provide for appropriate hearings upon due notice.

On February 4, 1938, the Board permitted I. L. W. U. Local 1-46 to withdraw its petition and ordered, in accordance with Article II, Section 37 (c), of the Rules and Regulations, Case No. XXI-R-421 to be severed from Cases Nos. XXI-R-325 and XX-R-196.

On February 5, 1938, the Regional Director issued a notice of consolidated hearing, copies of which were served upon the parties.^a Pursuant to the notice, a hearing was held in San Francisco, California, from February 15 through February 25, 1938, inclusive, and on March 25 and 26, 1938; in Los Angeles, California, on March 7, 1938; in San Pedro, California, from March 7, 1938, through March 9, 1938, inclusive; in Seattle, Washington, from March 14 through March 17, 1938, inclusive; and in Portland, Oregon, on March 18

^a A list of the parties served is contained in Appendix "A".

and 19, 1938, before Walter B. Wilbur, the Trial Examiner duly designated by the Board. The Board, the Shipowners Association of the Pacific Coast, and members thereof named in Appendix "B", Waterfront Employers Association of the Pacific Coast, and members thereof listed in Appendix "C", Waterfront Employers of Seattle, and members thereof listed in Appendix "D", Waterfront Employers of Portland, and members thereof listed in Appendix "E", Waterfront Employers Association of San Francisco, and members thereof listed in Appendix "F", and Waterfront Employers Association of Southern California, and members thereof listed in Appendix "G", I. L. W. U., I. L. W. U. District No. 1, I. L. W. U. Local 1-13, and International Longshoremen's Association * Locals 38-97, 38-89, 38-86, and 38-79, were represented by counsel and participated in the hearing. A. H. Petersen appeared for the American Federation of Labor, herein called the A. F. of L., James F. Kennedy and Lawrence Mallen appeared for I. L. A. Local 38-79. Charles J. Katz and John C. Packard appeared for those interests in I. L. A. Local 38-82, Inc., which were associated with the Committee for Industrial Organization, herein called the C. I. O., and W. J. Hull appeared for those interests in I. L. A. Local 38-82, Inc., associated with the A. F. of L. Samuel DeGroot made a special appearance for I. L. A. Local 38-82, Inc., for the purpose of contesting the jurisdiction of the Board. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties.

The A. F. of L., I. L. A., and I. L. A. Locals objected to the jurisdiction of the Board on the grounds that the existence of a contract between the employers and I. L. A. Pacific Coast District 38 deprived the Board of jurisdiction and that the Board had no power to designate a unit as one appropriate for the purposes of collective bargaining which was larger than the individual employer. The Trial Examiner overruled these objections to the jurisdiction of the Board. The I. L. W. U., I. L. W. U. District No. 1, and the I. L. W. U. Locals sought to introduce testimony as to the structure and formation of the Maritime Federation of the Pacific. Objections to the introduction of this evidence were sustained by the Trial Examiner. During the course of the hearing the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

* International Longshoremen's Association is herein called I. L. A.

On April 30, 1938, Gregory Harrison, counsel for the companies and associations, filed a brief with the Board at Washington, D. C. Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

During the course of the hearing counsel for the Board read into the record the following stipulation:

It is hereby stipulated between the National Labor Relations Board and the parties represented here by Mr. Gregory Harrison as follows:

(1) That each individual company here involved, that is to say, each company listed herein as belonging to either the Waterfront Employers Association of the Pacific Coast, the Waterfront Employers of Seattle, the Waterfront Employers of Portland, the Waterfront Employers Association of San Francisco, or the Waterfront Employers Association of Southern California, is engaged in the transportation or handling of waterborne cargo.

Two; that the longshoremen on whose behalf the petition in this case is filed, handle said waterborne cargo.

Three; that more than 50 per cent of said cargo, at the time it is handled by said longshoremen, is in the course of transportation between States in the United States, or between the United States and foreign countries, or between the United States and non-contiguous territories or possessions of the United States.

The companies which are members of the Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, and Waterfront Employers Association of Southern California, herein collectively called the regional associations, are either firms engaged in the transportation of cargo or passengers by water, stevedoring companies or, except in the case of Waterfront Employers Association of San Francisco, terminal operators.

The companies which are members of the Shipowners' Association of the Pacific carry lumber from the Northwest ports and are engaged in the transportation of cargo in interstate or foreign commerce. Three members of the Shipowners' Association, Charles H. Higgins Company, Hobbs-Wall & Company, and Los Angeles and

¹In the list of members of Waterfront Employers of Seattle, Board Exhibit No. 17, The Jordan Company appears under the classification "weigher".

San Francisco Navigating Company, transport cargo only between ports in the State of California, but the vessels of each of these three companies go outside the three-mile limit.

II. THE ORGANIZATIONS INVOLVED

International Longshoremen's and Warehousemen's Union is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all workers engaged in longshore work. International Longshoremen's and Warehousemen's Union, District No. 1, has jurisdiction over the ports in Alaska, British Columbia, California, Oregon, Washington, and the Hawaiian Islands; each of its Locals has jurisdiction over one or more ports.

International Longshoremen's Association is a labor organization affiliated with the American Federation of Labor, admitting to its membership all workers engaged in longshore work. Pacific Coast District International Longshoremen's Association, Local No. 38, has jurisdiction over all the ports of the Pacific Coast north of the Republic of Mexico, and including the territory of Hawaii; each of its Locals has jurisdiction over one or more ports.

III. THE HISTORY OF BARGAINING

In 1909 the I. L. A. and several independent longshoremen's associations with which it had been competing in various ports on the Pacific Coast entered into an agreement providing for the establishment of Pacific Coast District International Longshoremen's Association, Local No. 38, of which all the local longshoremen's unions on the Pacific Coast became a part. The Pacific Coast District was given autonomy with respect to labor relations. No working agreement could be entered into by any of its component locals without the approval of the District, and it was agreed that no Local was to be chartered by the I. L. A. without the consent of the District. Between 1909 and 1934 the I. L. A. Pacific Coast District was unable to reach that state of organization which would have enabled it to act effectively as a unit on the Coast. Several local agreements with employers, made by the San Francisco Local and the Tacoma Local, were the total result of collective bargaining efforts. Longshoremen's strikes in San Francisco, in 1916 and 1919, were lost by the longshoremen. After the 1919 strike, the longshoremen, with the exception of the Tacoma Local, were unable to achieve any effective collective bargaining until 1934.

In February 1934 the San Francisco Local, opposed to plans to submit demands of the longshoremen to arbitration, called a convention of the I. L. A. Locals in the Pacific Coast District to take action.

against these arbitration plans. The convention formulated certain demands and provided for the taking of a strike vote if the demands were not met by the employers. One of the principal points in the proposals of the convention was that there was to be one coastwide agreement rather than separate port agreements. Harry Bridges, now president of I. L. W. U. and of the I. L. W. U. District No. 1, testified that the longshoremen felt that the loss of the strikes in 1916 and 1919 was due to the lack of proper coast coordination among the longshoremen, which permitted the companies to play one port against the other.

After the employers had refused to accede to their demands, the longshoremen voted to strike on March 23, 1934. But on March 22 President Roosevelt appointed a Mediation Board and the contemplated strike did not take place. Hearings were held before the Mediation Board, and on April 3 an agreement was entered into between the San Francisco local and the Waterfront Employers' Union of San Francisco, an organization of companies operating in the San Francisco area, which provided for the recognition of the I. L. A. as the representative of the men in the port and for the negotiation of the wage differences. Negotiations on the wage question, however, were fruitless. The longshoremen reiterated their demand for a coast agreement, and on May 9, 1934, all the longshoremen on the Pacific Coast went out on strike. Within a week the seamen, boilermakers, and machinists had joined in the strike. Later the teamsters and licensed officers also struck.

On May 28 a proposal for settlement was made which provided that the employers in each of the ports of San Francisco, Los Angeles, Seattle, and Portland would recognize the I. L. A. as the representative of the longshoremen in those ports. This proposal was rejected by the longshoremen because it was not a coastwide agreement and because it did not provide a settlement for the other maritime unions on strike. On June 16 another proposal, signed by Joseph P. Ryan, president of I. L. A., and by one of the District officials, was rejected by a referendum of the longshoremen because it provided no settlement for the other maritime unions on strike. After June 16 a Joint Strike Committee was set up to coordinate the activities of the various maritime unions on strike and to replace the loose form of cooperation that had existed prior to this time. In the northwest ports a Northwest Joint Strike Committee was formed.

On June 26, 1934, President Roosevelt appointed a board, known as the National Longshoremen's Board, consisting of Archbishop Hanna, O. K. Cushing, and E. F. McGrady, to mediate the strike. This Board effectuated a settlement of the strike and the longshore-

men returned to work on July 31, 1934. The settlement provided that the issues in dispute which involved the longshoremen were to be submitted to arbitration and that, with respect to the other crafts on strike, collective bargaining negotiations were to be entered into if the maritime unions were found, after elections had been held, to represent a majority of the employees.

The National Longshoremen's Board, acting as an arbitration board, held hearings in various ports on the Coast. Melnikow and Kagel, of the Pacific Coast Labor Bureau, represented the longshoremen, and the employers were represented by Phleger. On October 12, 1934, an arbitration award, which constituted a series of agreements between the longshoremen and the regional associations of employers, was made. The Award set basic wage rates and hour provisions and provided for the establishment of jointly operated hiring halls. It was to be binding on all parties until September 30, 1935, and was to be automatically renewed from year to year unless written notice of the desire of any of the parties to terminate or modify the Award was given 40 days prior to its expiration date.

The Award was renewed in 1935 by virtue of the automatic renewal clause. In 1936 both parties gave notice of a desire to modify the terms of the Award. The longshoremen, in reopening negotiations, were motivated not only by a desire to effect certain amendments but also by the fact that they did not want to be so bound by the contract as to prevent their acting jointly with the other maritime unions if the latter decided that they wanted to change any of their working conditions. In September 1936 the Coast Negotiating Committee, consisting of representatives of the longshoremen and of the maritime unions, was set up to conduct negotiations with the maritime employers. This Coast Negotiating Committee, after failing to arrive at any understanding through collective bargaining negotiations, recommended to each union that a referendum be taken to empower their representatives on the Coast Committee to take strike action on October 28, 1936. On October 28 all the maritime unions simultaneously went out on strike. The Coast Negotiating Committee, during the period of the strike, was designated the Coast Policy Committee. An agreement terminating the strike was reached on February 4, 1937.

The agreement of February 4, 1937, nominally an amendment to the Award of the National Longshoremen's Board, contains an identical automatic renewal clause except that a 60-day period was set up within which to give notice of desire to terminate. The hiring of all longshoremen was to be through a hall maintained jointly by The Pacific Coast District of the I. L. A., and the employers' associations.

A Labor Relations Committee, composed of three representatives of the Employers Association and three representatives of the longshoremen, was to be set up in each port. The Labor Relations Committee maintains and operates the hiring hall, is in charge of the registration list of regular longshoremen from which the longshoremen assigned to work must be chosen, makes additions to the registered list, investigates and adjudicates all grievances and disputes relating to working agreements, decides all grievances relating to discharges, and in case of discharge without sufficient cause, may order payment for lost time or reinstatement with or without payment for lost time. It determines the organization of gangs and method of dispatching, and chooses the personnel of the hiring hall, with the exception of the dispatcher, who, under the agreement, is to be selected by the I. L. A. The agreement states that preference of employment is to be given to members of Pacific Coast District International Longshoremen's Association whenever available.

The agreement of February 4 provided for further negotiations with respect to rates on penalty cargo,* the maximum loads on slings which the longshoremen would have to handle, and safety provisions. No agreement has been attained with respect to a safety code, but an agreement as to penalty cargoes was reached on April 16, 1937, and an agreement as to maximum loads was reached on April 23, 1937. Several small locals rejected these agreements, but they were bound by the majority vote. Bridges testified that the longshoremen in San Francisco accepted the maximum loads agreement, which set standards of distinct benefits to longshoremen in ports other than San Francisco, even though the loads provided for were greater than the San Francisco longshoremen had had to handle previously.

The provisions of the agreement of February 4, 1937, and of the penalty cargoes and maximum loads agreements, are those in effect at the present time. The contracts are more fully discussed in Sections IV-VII below.

IV. THE HISTORY OF I. L. W. U.

Early in 1937 many I. L. A. locals passed resolutions in favor of, and pledges of support and sympathy for, the C. I. O. Prior to the annual convention of the Pacific Coast District of the I. L. A., Bridges, a president of the District, and the other District officers, circulated a report among the various locals which recommended that the District support the C. I. O., and that a referendum of the

* Penalty cargo is that cargo, which, because of the danger or discomfort or difficulty in handling, entitles the longshoreman to greater pay.

International organization on the question of supporting and affiliating with the C. I. O. be held. It was intended that the report be discussed in the locals, and that the delegates to the convention from the various locals be instructed on this issue.

The District Convention, meeting in Seattle in May, 1937, adopted Bridges' report, and took the further action of recommending to its locals that they refuse to pay any assessment to the International which would be used to fight the C. I. O. and of deciding that a referendum would be taken to see how far the District would go in such refusal.*

The longshoremen believed that the A. F. of L. Executive Council, in its meeting at Cincinnati in June 1937, had decided upon extra assessments from its international unions for the purpose of fighting the C. I. O., and that Ryan had agreed that the I. L. A. would pay this extra assessment. Communications were sent to Ryan asking if he had taken the position that he was willing to pay the extra assessment. The communications were not answered.

At this time the Maritime Federation, with which the Pacific Coast District and other maritime unions were associated, held its convention at Portland, Oregon. Since the convention in February 1935, the I. L. A. delegates to the Maritime Federation conventions had been designated the I. L. A. caucus. On occasion, representatives of the I. L. A. International had met with the caucus. The I. L. A. caucus, after the failure of Ryan to reply to the communications sent him concerning the extra assessments, decided to adopt the recommendation of the Maritime Federation Convention that each of its member unions hold a coastwise referendum to determine whether or not their members wished to become affiliated with the C. I. O., and, on June 14, blank ballots providing for a vote on the question of affiliating with the C. I. O. and the question of returning the defense fund, which was not very large at the time, were sent to the locals. The American Radio Telegraphists' Association and the Marine Engineers' Beneficial Association, both members of the Maritime Federation, had, at this time, already become affiliated with the C. I. O.

The results of the vote among the members of the Pacific Coast District of the I. L. A. were 11,771 in favor of affiliating with the

* The resolutions, under the heading "Unity of the Labor Movement and the C. I. O." read "RESOLVED: In the event any assessment is levied by the AFL and any attempt is made to collect from locals such assessment, the purpose of which is to carry on a fight against any bona fide group, either nationally or locally, we request unions refuse to pay such assessments and entire District organization back up any local who may be disciplined because of their stand, and be it still further

"RESOLVED: That our District officials and Executive Board stand instructed to take a referendum ballot to determine to what extent we will go in our refusal."

C. I. O. and 3,625 opposed to affiliation;¹⁰ the longshoremen's vote was 7,073 in favor of affiliating with the C. I. O. and 2,263 opposed.¹¹

On July 18, 1937,¹² the District Executive Board¹³ met at Seattle, Washington. They approved the taking of the referendum by the I. L. A. caucus and instructed the officers to apply to the C. I. O. for a charter. They decided that they would operate with the same officers and the same Executive Board, that the District and the several locals would function as previously under their existing constitutions, and that the Executive Board should revise the District Constitution in so far as that was made necessary by the new affiliation.

On July 18, 1937, the Executive Board authorized the officers to apply for a C. I. O. charter, and Ryan was informed of this on July 19.

On July 22, 1937, the following letter, together with a blank form of application for an International Longshoremen's Association charter, was received by the Pacific Coast District Locals:

TO ALL PACIFIC COAST DISTRICT LOCALS, I. L. A.

DEAR SIRS AND BROTHERS: President Harry Bridges of the Pacific Coast District has notified our International Association that the Pacific Coast District membership is seceding from our International Organization to join the group known as the C. I. O.

Naturally, the majority rules, but the experience of the Pacific Coast longshoremen in the past has been that by following radical leadership they have had to leave it to the Atlantic Coast District membership to set their wages, and with the exception of the port of Tacoma (where they remained loyal to our International Association) they have had nothing to say about their condition.

We, therefore, feel that any ports that wish to remain loyal to our International should do so, and that any group in any port should be permitted to retain their affiliation with the I. L. A. Charters will be issued to these minority groups in each port who wish to make application for same, and those who wish

¹⁰ The Pacific Coast District of the I. L. A. contained classes of workers other than longshoremen. It included warehousemen, checkers, scalers and miscellaneous employees such as watchmen, gatemen, shipping clerks, etc.

¹¹ This includes the vote of several small locals in Hawaii and in Alaska.

¹² At this time the vote had not yet been completed. In a letter dated July 16, 1937, Meehan stated that the vote among the members of the Pacific Coast District was 11,441 in favor of C. I. O. affiliation and 3,349 opposed to such affiliation.

¹³ This was a "lame duck" Executive Board. A new Executive Board had been regularly voted for by the I. L. A. membership but the votes had not yet been counted.

to remain in a body can return their present serial charters and direct charters will be issued.

We request that you give this serious consideration, as I understand that the other marine organizations on the Pacific Coast are not going to affiliate with the C. I. O.—The Teamsters are remaining loyal to the American Federation of Labor and the Longshoremen may again find themselves alienated from the rest of the labor movement.

We guarantee the entire backing of the International Longshoremen's Association to the membership who wish to remain loyal to us.

Fraternally yours,

(s) JOSEPH P. RYAN,
International President.

On July 30, 1937, Almon E. Roth, President of Waterfront Employers Association of the Pacific Coast, sent a letter to Bridges, addressed as President of International Longshoremen's Association, Local No. 38, in which it was stated that the Waterfront Employers Association of the Pacific Coast would not give notice of modification or termination of the February 4 agreement, which would be automatically renewed at midnight, July 31, 1937.

On the same day, Bridges sent the following reply:

SAN FRANCISCO, CALIF., July 30, 1937.

MR. ALMON E. ROTH, *President,*
Waterfront Employers' Association of the Pacific Coast,
215 Market Street, San Francisco, California.

DEAR SIR: This will acknowledge receipt of your communication of July 30, 1937, expressing intention of not giving notice of modification or termination of existing agreements and thereby automatically renewing them for another year.

We hereby advise you that it is not our intention to give notice of modification or termination of existing agreements and that therefore they will be automatically renewed for another year.

We note the change of your designation to Waterfront Employers' Association of the Pacific Coast. Please be advised that by action of our Executive Board in compliance with the vote of our membership we have likewise changed our name to International Longshoremen's and Warehousemen's Union.

Yours very truly,

(Sgd.) H. R. Bridges:
H. R. BRIDGES, *President.*

A C. I. O. charter was received on August 11, 1937. On September 10 and 11, the Executive Board met at San Francisco. They decided

that the name "International Longshoremen's and Warehousemen's Union" would be adopted, that the body would become the "Executive Board of the International Longshoremen and Warehousemen's Union", that they would dissociate themselves from District 38 of the I. L. A. and the International, that the District would become known as District No. 1, I. L. W. U., and that charters would be issued to the various locals. They agreed to be bound by the decisions of the last and previous I. L. A. conventions.

From August 24, 1937, on, all the locals of longshoremen with the exception of four, applied for charters from the I. L. W. U. District. The four exceptions were the Tacoma, Olympia, Port Angeles, and Anacortes locals, all in the Puget Sound area. At the present time, there are about 10,575 Pacific Coast longshoremen in the locals that are a part of I. L. W. U. District No. 1, and about 904 longshoremen in the locals that have remained with the I. L. A.¹⁴

The Tacoma local, on September 7, 1937, set up a committee of six to coordinate their efforts to stay in the I. L. A., and to maintain themselves as the I. L. A. District. The committee called an "emergency convention" at San Francisco on September 20 or 21, 1937, at which time officers were chosen; most of the old officers now were the officers of the I. L. W. U. The emergency convention instructed Calkins, who had been elected secretary-treasurer, to send a letter to the employers letting them know that I. L. A. District No. 38 was still in existence and asking them to do business with it. Such a letter was sent, but an answer was never received.

The emergency convention also passed a motion to the effect that they would operate under the International constitution. No mention was made of the District constitution.

V. THE HISTORY OF THE EMPLOYER ASSOCIATIONS

Melnikow, of the Pacific Coast Labor Bureau, testifying as an expert for I. L. W. U., and Thomas G. Plant, vice president of the American-Hawaiian Steamship Company, both stated that basic wages and hours of work for longshoremen on the Pacific Coast had been uniform since 1922. Melnikow attributed this to close cooperation between the employers of longshore labor on the Coast.

There have been associations of employers of longshore labor in Seattle since 1908, in San Francisco since 1914, in Portland since 1921, and in San Pedro since 1923. In 1934, they were organized in four regional associations, Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers' Union of San Francisco, and Marine Service Bureau of Los Angeles. Only a very

¹⁴ There are approximately 23,324 workers in all the locals that constitute a part of I. L. W. U. District No. 1, and 1,609 workers in locals that have remained in the International Longshoremen's Association.

small percentage of those companies which use longshore labor are not members of the various associations, and no large company is not a member.

A committee consisting of representatives of the four associations was formed during the 1934 strike, and carried on the negotiations with the longshoremen which finally resulted in the October 12, 1934 Award of the National Longshoremen's Board. The Award was in the form of one document that was stated to be "a series of agreements between the International Longshoremen's Association, acting on behalf of various Locals whose members perform longshore labor," on the one hand, and each of the regional associations, separately, on the other hand.

Marine Service Bureau of Los Angeles subsequently became Waterfront Employers Association of Southern California, and Waterfront Employers' Union of San Francisco became Waterfront Employers Association of San Francisco. Waterfront Employers Association of Southern California includes the employers in the ports of Los Angeles, San Pedro, San Diego, Santa Barbara, Ventura, and other ports in that vicinity. Waterfront Employers Association of San Francisco covers the San Francisco Bay region through the northern part of California. Waterfront Employers of Portland includes the Oregon and Columbia River ports, and Waterfront Employers of Seattle includes the ports of Washington, excluding the ports on the Columbia River.

In May 1935 Francis P. Foisie was given the task of coordinating the activities of the four regional associations and was entitled Coast Coordinator. Foisie testified that it was the general understanding among the members of the associations that as long as they remained members they could not enter into individual agreements with longshore unions.

In the spring of 1936, representatives chosen by the regional associations met at San Francisco. A committee appointed by this conference recommended to the whole group:

1. That the Committee appointed by the Conference and subsequently confirmed by the above-mentioned associations, be continued as the Committee.

2. That the Committee be known as:

The Coast Committee for the Shipowners acting on behalf of Waterfront Employers Association of Southern California, Waterfront Employers Association of San Francisco, Waterfront Employers of Portland, Waterfront Employers of Seattle.

3. That the Committee be authorized to act exclusively in behalf of the four Associations of Waterfront Employers in connection with or by reason of the pending expiration of their contracts with the Pacific Coast District of the International Long-

shoremen's Association, including the determination and execution of all matters relating to negotiation of new labor contracts, or termination, or renewal, or modification of existing contracts, and the settlement of any and all disputes that may arise in connection therewith.

6. That the Committee shall work toward one basic settlement of the matters relating to the four Associations of employers of longshore labor.

The recommendations were adopted and ratified by the four associations, and the Coast Committee, consisting of T. J. Plant, T. B. Wilson, John Walsh, E. T. Ford, W. P. Bannister, Hugh Gallagher, and Joseph J. Lunny, was set up.

Shortly after it was formed, the Coast Committee gave notice to the I. L. A. Pacific Coast District that they desired amendments to the contract which would have renewed itself on September 30, 1936. The Union gave a similar notice. The Coast Committee then took charge of negotiations with the longshoremen, and, after the 1936-1937 strike, reached the agreement of February 4, 1937, which was an agreement between Pacific Coast District, Local 38 of the International Longshoremen's Association, and the Coast Committee for the shipowners, on behalf of the four associations.

In June 1937 an association known as Waterfront Employers Association of the Pacific Coast was created. Almon E. Roth, president of the Association, testified that the Coast Committee had felt that the renewal and execution of new contracts would call for some central agency which would assume the same function which had been performed by the various port associations, and that the Coast Association was formed for that purpose. Harrison, counsel for the Association, testified that it was an association of those engaged in the shipping business created for the purpose of formulating labor policies up and down the Pacific Coast in connection with longshore labor and other matters in which they were interested. He stated that the prime emphasis was on labor policy.

Waterfront Employers Association of the Pacific Coast includes in its membership voting members, which are firms "regularly engaged in carrying cargo by water to and from any port on the Pacific Coast of the United States (except Alaska ports) or any agent designated by such firm . . .," and associate members, which are firms "employing longshoremen or other shore employees in any port on the Pacific Coast of the United States." Voting power is restricted to the voting members.¹³

¹³ Voting power is distributed among the voting members in accordance with the tonnage of cargo handled by such member in the preceding calendar year.

Officials of the Association stated that, although all of the shipping companies, included in the first class of membership, require longshore labor for their operations, few of them hire longshore workers directly;¹⁶ the necessary longshore work is, in the greater number of instances, done by the stevedoring companies, which constitute the associate member class. It was the contention of counsel for the employers that, because of this fact and because the regional associations can act independently in matters involving longshore labor, Waterfront Employers Association of the Pacific Coast is not closely concerned with the negotiation of agreements concerning longshore labor on the Pacific Coast or with the terms of employment of longshore labor except in so far as it acts as a clearing house for information for the regional associations.

It is clear, however, that both the shipping companies and Waterfront Employers Association of the Pacific Coast are intimately associated with the employment of longshore labor and the negotiation and execution of agreements concerning longshore labor.

The Coast Committee for the shipowners, which negotiated the agreement of February 4, 1937, consisted of seven men, only one of whom was a representative of a company that regularly employed longshore labor. The list of members of the regional associations which is attached to the February 4 agreement for the purpose of indicating what companies were represented, contains the names of the shipping companies, and section 1 of the agreement contains the following paragraph:

It is agreed and understood that if the employers, parties to this agreement shall sub-contract work as defined herein, provision shall be made for the observance of this agreement.¹⁷

The Amended Articles of Incorporation of Waterfront Employers Association of the Pacific Coast, in stating the purpose of the Association, refers generally to members without distinguishing between voting and associate members:

ARTICLE II

The said corporation is one which does not contemplate pecuniary gain or profit for its members and is formed for the following purposes and objects:

1. To encourage the establishment and maintenance of fair and reasonable wages and working conditions for longshore work

¹⁶ The statement may be misleading, in that the record does not indicate the percentage of the longshore work on the Pacific Coast, in terms of tonnage, that is performed by the longshoremen hired directly by these companies.

¹⁷ Section 3 of the Amended Articles of Incorporation, quoted below, also refers to contracts between members of the Association and other employers in matters relating to the employment of longshoremen.

and other work ashore relating to steamship service and, by the establishment and maintenance of harmonious and peaceful industrial relations between employer and employee, to promote dependable and efficient steamship service in the public interest;

2. To fix, establish and maintain on behalf of its members policies in all matters relating to longshore work and other employments ashore at Pacific Coast ports of the United States (except Alaska ports);

3. To represent its members and others in matters relating to the employment of longshoremen and other shore employees at said ports including the negotiation, execution and performance of contracts with other employers or groups thereof and contracts with groups or associations of longshoremen and other shore employees governing wages, hours and conditions of such employment;

4. To assist, represent and act in behalf of the members and others in connection with any violations of agreements relating to longshore or other employments ashore at said ports, to the end that all such agreements shall be faithfully performed by all parties thereto;

The bylaws provide that the regional associations shall each be entitled to designate two representatives, one to be selected for knowledge of stevedoring, the other for knowledge of terminal or dock operation. These representatives are to attend meetings of the Board of Directors of the Coast Association, although they do not have any voting power. The bylaws provide that members are bound by contracts entered into by the Coast Association unless they resign within 7 days after the vote on the contract.¹⁶ The bylaws also provide that:

ARTICLE XVIII

SECTION 1. This corporation shall have power to establish policies for its members and the corporation in all matters relating to labor contracts and labor controversies and shall have power to represent and act on behalf of its members in any negotiations carried on by the corporation on behalf of its members with unions of longshoremen or other employments ashore and, subject to the provisions of Article V of these by-laws, any contracts, commitments or undertakings made by this corporation on behalf of its members with any union shall bind the members of this corporation. . . .

¹⁶ By-Laws—Article V.

Sec. 2. If any union, its members or officials, shall violate any labor contract or award relating to wages, hours or working conditions to which agreement or award this corporation or any of its members is a party, whether by strikes, stoppages of work or in any other manner, any member affected thereby shall notify the corporation. . . . If compliance is not secured, a meeting of the members of this corporation shall forthwith be called and all members of this corporation shall take whatever action shall be determined by a vote of members holding at least a majority of the voting power of the membership, provided that there shall be no suspension or termination of any such contract or agreement for breach thereof without the consent of members representing at least two-thirds of the voting power of the entire membership. Provided further that written notice of any such vote or consent shall be immediately given by registered mail to all members and no such vote or consent shall bind any member who did not join therein and who resigns within seven days after the date of mailing of such notice.¹⁹

In July 1937 the following resolution was adopted by the four regional associations:

Be it hereby resolved, that the Waterfront Employers Association of the Pacific Coast, a nonprofit corporation, be, and the same is, hereby authorized on behalf of this association, and as its act and deed, to act in all matters relating to the expiration of pending contracts between this association and the International Longshoremen's Association or any Local thereof, including the determination and execution of all matters relating to the negotiation of new labor contracts or termination or renewal or modification of existing contracts and the settlement of any and all disputes that may arise in connection therewith.²⁰

It should be noted that this language closely parallels the language in the recommendations which led to the setting up of the Coast Committee.

¹⁹ With regard to cooperation in strikes, the bylaws provide that:

If any labor union or association of working men or any members of any such union or association shall violate any agreement with this corporation, or with any member thereof, or shall refuse to work for any member or members of this corporation, the Board of Directors shall, upon application, cause investigation to be made, and if the Board of Directors shall find that such union or association is at fault, and fails or refuses to make reparation or otherwise remedy such violation or refusal to the satisfaction of the Board of Directors, and if this corporation after investigation shall desire to resist the demands of such union or member thereof, this corporation shall render to such member or members of this corporation the fullest moral support, and shall pay such expenses incurred by such member in any strike, lockout or other labor trouble caused by such action of the union, association or member or members thereof, as shall be approved and limited by the Board of Directors of this corporation in advance. . . . —Article XX.

²⁰ Roth testified that, as far as he knew, this authorization has never been revoked.

The letter of July 30, 1937, referred to above, indicating that the employers wished to let the February 4 agreement renew itself, was signed by Roth, president of Waterfront Employers Association of the Pacific Coast, on behalf of the four regional associations.

Grievances and ordinary disputes are usually referred to the Labor Relations Committee of the port. In the small ports in the Northwest, however, the employers generally have one man to represent them. This representative takes care of routine questions. If, however, a dispute of any importance occurs, two more representatives are sent by the Association involved, and they, together with the local representative, act as the employers' committee to deal with the dispute.

In cases where the dispute is of some importance, either because it is in a large port, or because it involves a problem of general application, the local Labor Relations Committee will be advised in the matter by Waterfront Employers Association of the Pacific Coast or by the regional association. Foisie, who, since the creation of the Coast Association, has been acting as assistant to Roth, has on occasion gone into the port to assist in the settlement.

When the dispute threatens a stoppage of work, Roth or Foisie or other officials confer with Bridges or Meehan, secretary of I. L. W. U. District No. 1, or other District officials, in an attempt to reach a settlement. The record contains a large number of communications from Roth to Bridges and to Meehan, all dealing with unsettled disputes. Both Bridges and Meehan testified as to other communications, telephone conversations, and personal conferences.

Thus, in actual practice, matters of importance are referred to Roth's office.²¹ Before the formation of the Coast Association, they were referred to the office of Foisie, Coast Coordinator, or Gregory Harrison, counsel for the companies. The history of the formation and actual operation of the various associations of companies on the Pacific Coast convinces us that, with respect to longshore labor, these companies function entirely through the regional associations and through Waterfront Employers Association of the Pacific Coast, and that the regional associations operate as a closely integrated unit.

The Shipowners Association of the Pacific Coast is an association of owners and operators of steam schooners which are engaged in the carrying of lumber from the Northwest ports. There is a supplementary agreement, between International Longshoremen's Association, Pacific Coast District No. 38 and the Shipowners Association,

²¹ Roth is president of Waterfront Employers Association of the Pacific Coast, Waterfront Employers Association of San Francisco, and of Pacific-American Shipowners' Association, an organization of American-owned lines having their principal ports on the Pacific Coast and organized for the purpose of representing its members in connection with labor matters relating to off-shore as distinguished from on-shore labor. The three Associations occupy the same offices in the Federal Reserve Building in San Francisco.

attached to the February 4, 1937, agreement, which provides that all the provisions of that agreement are to apply to the signatories, except the provision defining the scope of longshore work. The crews on these steam schooners usually do some of the work ordinarily classified as longshore work and the steam schooner operators did not want to be bound by the provisions of the agreement with respect to that portion of the longshore work done by the crews.

Plant stated that the negotiations for the supplementary agreement were carried on separately. He testified, however, that in the negotiations terminating the 1936-1937 strike, the Coast Committee broke themselves up into sub-committees. The negotiations for the Shipowners Association were, according to Plant, carried on by Lunny, a member of the Coast Committee, and Ralph Myers, president of the Shipowners Association. Bridges testified that Plant did most of the talking for the Shipowners Association of the Pacific. Lunny, though a member of the Coast Committee, spent most of his time on steam schooner affairs. Finally, there was a joint conference and the agreement and supplementary agreement were entered into.

It will be noted that the supplementary agreement merely serves to except steam schooners from one provision of the main agreement. In all other respects, the individual companies which are members of the Shipowners Association are affected in the same manner as are the companies belonging to the regional associations.

Longshoremen are hired in the same manner and on the same terms; disputes go through the same Labor Relations Committee in the port; and when a settlement cannot be reached the matter is referred by the companies to Bridges. Lunny and Myers are members of the Board of Directors of Waterfront Employers Association of the Pacific Coast. The record contains evidence of a letter on the letterhead of the Waterfront Employers Association of the Pacific Coast, dated April 7, 1937, addressed to E. S. Coates, manager of the Waterfront Employers Association of Portland and signed by F. T. Foisie with the notation that copies were to be sent to A. E. Roth and Ralph Myers. The letter concerns a dispute in the operation of a steam schooner. Roth stated, when questioned about this letter, that the Waterfront Employers Association of the Pacific Coast advises the Shipowners Association in matters concerning labor policy. It is evident that the labor relations of the members of the Shipowners Association of the Pacific Coast are handled in the same manner and through the same agencies as are the labor relations of the members of the regional associations.

VI. THE APPROPRIATE UNIT

In its petition for investigation and certification of representatives I. L. W. U. District No. 1 asserts that the unit most appropriate for

the purposes of collective bargaining consists of all the workers employed at longshore labor in the Pacific Coast ports of the United States. It is the contention of the companies that the appropriate bargaining unit for longshoremen must be one restricted to those longshoremen in the employ of a particular employer at a particular Pacific Coast port.

The history of bargaining and the history of employee organization, as set forth in previous sections, are completely persuasive of the fact that a unit including all the workers employed at longshore labor in the Pacific Coast ports of the United States is the one that will insure to employees the full benefit of their right to self-organization and to collective bargaining, and will otherwise effectuate the policies of the Act.

Particularly, the failure of the longshoremen to achieve any satisfactory collective bargaining agreements when the bargaining was on a local scale is to be contrasted with the highly successful collective bargaining achievements when the longshoremen bargained as a coast unit. From 1934 on, the longshoremen have rejected proposed agreements which were not coast-wide in scope, have bargained as a coast unit, and have been working under one coast-wide agreement. In dealing with the employers, the longshoremen have done so through the District, as has been shown.²²

In dealing with the employers, the longshoremen have cooperated with the other maritime crafts and with the crew personnel. The proposals of May 28, 1934, and June 16, 1934, were rejected by the longshoremen because they did not provide a settlement for the other group on strike. The Joint Strike Committees in 1934, the Coast Negotiating Committee and the Coast Policy Committee in 1936, and the existence of the Maritime Federation of the Pacific, all bear witness to the identity of interest and the method of cooperation of the longshoremen and the other maritime groups. These maritime unions, including the American Radio Telegraphists' Association, the Marine Engineers Beneficial Association, the Marine Cooks and Stewards of the Pacific, and West Coast Local No. 90 of the Masters, Mates and Pilots of America, are organized on a coast basis, and the longshoremen have found that in order to work effectively with them, they too had to organize on a coast basis.

The history of collective bargaining and of the organization of the longshoremen, and the sacrifice of some of the longshoremen on the maximum loads agreement, are ample evidence of their desire for a coast unit. Several clauses in the I. L. W. U. constitution are

²²Further, convention rulings decree that the locals are not to enter into separate port agreements. Respondent Exhibit No. 13 lists many port agreements, but almost none of them involve the longshore locals.

also indicative of the desires of the longshoremen in this regard. Thus Article XIII reads:

SECTION 1. When any I. L. W. U. local is forced to dissolve due to its membership being thrown out of work by the ceasing of the sole source of employment, the locals of the Sub-district in which the dissolved local is located will be required to accept the unemployed members on a pro rata basis, provided that if the Sub-district locals cannot absorb said members, they will be divided pro rata amongst the locals of the same craft of District 1.

Under this clause, longshoremen from the ports of Stockton and Garibaldi are now working in other ports. Article XVIII,²² which provides that any longshoreman in the District may obtain a visiting card which will give him work privileges in a port other than his own, for a period of 30 days, also shows the feeling of identity of interest among the longshoremen.

Action by the longshoremen, if it is to be effective, must be concerted and coordinated. At the present time, sympathy among the longshoremen is such that, in the absence of other factors, they will refuse to work ships diverted from a port in which there has been a lock-out. Unless the longshoremen's activities are completely integrated, therefore, there will be disorganized strikes. Bridges stressed the fact that such strikes must be avoided by the longshoremen, if they are to keep their organization. To this end, the District officials, in April 1936, ordered the longshoremen to work ships diverted from San Francisco, where there had been a lock-out, and, in January 1938, the I. L. W. U. officials ordered the working of ships diverted from Seattle, where there had been a lock-out. The lessons of the disastrous local strikes in 1916 and 1919 have brought home to the longshoremen the fact that action that is not coast-wide will result in a harmful set-back to their self-organization.

The companies contend that the working rules differ in various ports, and that that is indicative of the impropriety of a coast unit. It must be noted, however, that wages, hours, methods of hiring, methods of settling grievances, payment for penalty cargoes, and maximum sling loads are uniform on the Pacific Coast. There are

²² Article XVIII reads:

SECTION 1. Any member of District 1 so desiring may procure from his local secretary a visiting card showing that he is paid up to date and in good standing, which will entitle him to the following privileges in any local of the District of a similar craft.

SECTION 2. Work privileges accorded to a local member shall be for a period not to exceed thirty days unless agreeable to the local being visited.

SECTION 3. All locals of the District shall be required to accept a minimum of visitors of one per cent of their membership, but no local should be visited more than once a year by any one member unless agreeable to local so visited.

divergences in working rules only in minor matters. Thus, for example, the longshoremen in the San Francisco area are paid for their "travelling-time," which is the time spent travelling across San Francisco Bay to their work, if that is necessary. Other differences in working rules among the ports may be due to differences in cargo handled. Even in these minor matters, the drive is for uniformity among the ports. Thus in the Northwest the longshoremen have a committee to meet with the companies and to decide upon working rules for the longshoremen in the locals on Puget Sound, including the Aberdeen and Grays Harbor locals. This committee consists of representatives from the I. L. A. Locals in that area, as well as from the I. L. W. U. locals. Similarly, in the Columbia River area, the negotiations, carried on in Portland, are on a regional basis.

Since the essential working rules are on a coast-wide basis, and since port differences occur only in nonessential matters, the argument against a coast unit, based on working rules, does not carry much weight. This is especially true when it is considered that the working rules are determined upon, in the main, by the Labor Relations Committees which are set up by the coast-wide agreement.

The numerous factors which have been pointed to as indicating that the coast unit is the one which will best insure to the longshoremen the full benefit of their right to self-organization and to collective bargaining, are all reflections of the organization of the employers. The history of bargaining and of the longshoremen's organizations is a vivid portrayal of the experiences of the longshoremen as they learned that, since their employers were acting together on a coast basis, they, too, would have to build a coast organization which would parallel the organization of the employers. The desires of the men for a coast unit are the result of their failures when they acted on a port basis, and their success when they acted with their fellow longshoremen on the coast. The imperative need of the longshoremen for the coast unit and the dangers of smaller units arise because the companies on the Pacific Coast which use their labor are organized on a coast basis.

We have set out in some detail the history of the organization of these companies and we have considered the present set-up of the four regional associations, Shipowners Association of the Pacific Coast, and Waterfront Employers Association of the Pacific Coast. The organization of the employers is another important factor which militates toward the conclusion that the coast unit is the one most appropriate for purposes of collective bargaining.

It is contended that the Board has no jurisdiction to go beyond the individual company in deciding upon an appropriate unit of employees. The Board, however, is expressly given the authority to decide that the "employer" unit is the unit most appropriate for purposes of collective bargaining. The Act includes within the term *employer*

"any person acting in the interest of an employer, directly or indirectly," and the term *person* "includes one or more . . . associations . . ."

We have, in our examination of the functioning of the regional associations, pointed out how the associations engaged in collective bargaining for the individual companies, how the associations took charge of the operation and execution of the agreement, and how they dealt with the longshoremen in all matters involving labor relations. Indeed, the contract so regulates the hiring, dispatching, conditions of work, payment for work, and method of settling grievances, that the individual company can be said to exercise very few of the functions which are the essential attributes of the employer-employee relationship. The regional associations clearly act in the interest of these various companies. We have also shown the close articulation between the regional associations, effected by Waterfront Employers Association of the Pacific Coast, and the fact that, in actual practice, the existence of the Coast Association resulted in the regional associations' acting through the Coast Association as an integrated unit. What has been stated as applicable to the various regional associations is substantially true of Shipowners Association of the Pacific Coast.

We find that the workers who do the longshore work in the Pacific Coast ports of the United States for the companies which are members of Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, Waterfront Employers Association of Southern California, and Shipowners Association of the Pacific Coast constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to these workers the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

F. T. Foisie testified that the term "longshoremen" quite frequently includes everyone who works either on board ship or on the docks, but that in the various ports there may be subdivisions of longshoremen, dock workers, grain handlers, etc. The exact meaning of these latter categories and the type of work which the men in these categories handle, varies from port to port. The type of work which the individual longshoreman does may also vary. The categories "permit men" and "casual men" also have different meanings in the various ports. It will be necessary, therefore, to discuss by individual ports the groups of men which we conclude are to be comprehended in the term "longshoremen." This will be done in Section IX below.

The walking boss is the individual who has general supervision over the loading and discharging of the entire ship. The I. L. W. U.

desires to have the walking bosses included in the unit; the majority of the walking bosses are Union members. The I. L. A. had a separate local for walking bosses but the I. L. W. U. refuses to charter such a local. Walking bosses are not dispatched or hired through the hiring hall, they follow the ship, except in the case of small companies, where the walking boss is on an hourly basis and may be in the employ of more than one company. Walking bosses have memoranda of understanding with the individual company, not with the employers' associations. Because of this difference in their relations with employers, walking bosses are not to be considered as within that category of longshoremen which constitutes the appropriate unit defined above.

VII. THE QUESTION CONCERNING REPRESENTATION

Gregory Harrison, counsel for the companies, testified that the letter of July 30, 1937, from Roth to Bridges, in which it was stated that Waterfront Employers Association of the Pacific Coast would not give notice of a desire to terminate the agreement, and the reply of the same date, in which Bridges stated that the longshoremen, too, wanted to renew, and in which he noted the new name "Waterfront Employers Association of the Pacific Coast," and stated that "by action of our Executive Board in compliance with the vote of our membership we have likewise changed our name to International Longshoremen's and Warehousemen's Union," were both put into a circular which was mailed to all members of the associations. The letters were widely commented upon by the newspapers on the Coast. At this time, the referendum had been taken, the July 18 meeting of the Executive Board at Seattle had been held, the C. I. O. charter had been applied for, and only a few formal steps remained before the change of affiliation would be completely effected. Thus, the employers were permitting the agreement to renew itself when they had full knowledge of the situation among the longshoremen and knowledge that they were now dealing with the I. L. W. U.

And in the execution of the contract the employers have been constantly dealing with the I. L. W. U., for it is the I. L. W. U. which has been taking care of the detailed performance of the contract, except in the case of the four Puget Sound ports which voted against affiliation with the C. I. O. The longshoremen who work the cargo on the ships and docks are I. L. W. U. members. The hiring halls from which the longshoremen are dispatched to the work are maintained jointly by the employers and the I. L. W. U.; the Labor Relations Committees, which operate the hiring halls and which settle disputes, consist of representatives of the regional associations and representatives of the I. L. W. U. Thus in San Francisco, for

example, employer members of the Labor Relations Committee, appointed by the executive members of Waterfront Employers Association of San Francisco, have been regularly meeting and working with the I. L. W. U. representatives on the Committee. The dispatchers in the hiring halls are all I. L. W. U. men. Preference of employment is given to I. L. W. U. men. The union to which the employers file complaints against individuals for violation of the agreement is the I. L. W. U., and the union which penalizes the individual longshoremen for such violation, as provided for in the agreement, is the I. L. W. U. In important disputes, Roth and Foisie contact Bridges and Meehan, the president and secretary of the I. L. W. U. The I. L. W. U. has, in effect, completely taken over the contract, and the employers have, in actual fact, acquiesced and have joined with the I. L. W. U. in the execution of the contract.)

But the associations and companies have refused to give formal recognition to the I. L. W. U. Their communications to Bridges and Meehan, in 1937, have been addressed to these two in their former capacities as I. L. A. officials, although on at least two occasions,²⁴ they have been asked to send communications to the International Longshoremen's and Warehousemen's Union. At the present time, they address their communications to Harry Bridges, without any further designation, at an address on Market Street, San Francisco.

Occasionally, there are lapses. Thus, checks for the support of the hiring halls in San Francisco, which are drawn on the account of the Labor Relations Committee, have two lines for signatures, under one of which is printed "WEA of SF" and under the other is printed "ILW 1-10." The record also contains a telegram, dated March 10, 1938, from Roth to "Matt Meehan, International Longshoremen's and Warehousemen's Union," which deals with a labor dispute.

But formal recognition of the factual situation has always been refused. In a letter to Henry Schmidt, president of the San Francisco local of the I. L. W. U., Roth denies that the I. L. W. U. had been recognized as the bargaining agency and states:

... I am writing to reaffirm our position of neutrality in the present inter-union controversy between the I. L. A. and I. L. W. U. Neither the San Francisco Waterfront Employers Association nor the Pacific Coast Waterfront Employers Association has taken any position on the questions of which union is the proper collective bargaining agency, or which union is entitled to administer the existing contract. On the contrary, we have repeatedly informed both you and Mr. Bridges that

²⁴ The record contains two letters, dated August 18, 1937, and August 26, 1937, in which Bridges calls this to the employers' attention.

the Waterfront Employers would not take any position in favor of or against either of the parties to this controversy. My exact words were "we propose to walk straight down the middle of the road and let nature take its course".

In a letter from Roth to members of the Association, dated October 9, 1937, he states that the Association has taken no position on the question of which union shall act as agent of the men in negotiating future renewals or modifications of the contract.

While the practice of the parties during the period of the contract indicates an acceptance in fact of the I. L. W. U. District No. 1 as the labor organization party to the contract, it nevertheless is not necessary in this case to decide the precise legal status of the I. L. W. U. with respect to the contract. In considering the existence of a question concerning representation we need only consider that the last day for notice of a desire to modify or terminate the contract is July 31, 1938, that the employers refuse to recognize the I. L. W. U. and that it is essential that the proper collective bargaining agency be designated, so that negotiations for the next period may be facilitated and properly conducted.

We find that a question has arisen concerning the representation of longshoremen doing longshore work for the companies which are members of the various regional associations.

VIII. THE EFFECT OF THE QUESTION OF REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with operations of the companies described in Section I above, tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IX. DETERMINATION OF REPRESENTATIVES

The longshoremen in each of the ports, with few exceptions,²³ signed cards designating the I. L. W. U. as their exclusive representative for purposes of collective bargaining,²⁴ which were presented in evidence. Lists of the longshoremen doing the work in each of the ports were also put into evidence. However, the lists for Port Orford, Oregon, and Newport, Oregon, were not presented, apparently through inadvertence, nor was any mention made of Port Blakely, Washington, although that port is referred to in the petition. These three ports are small ones as indicated by the number

²³ It was noted above that the longshoremen in the ports of Tacoma, Olympia, Port Angeles, and Anacortes did not join in the change of affiliation.

²⁴ The cards read: "I am employed exclusively as a longshoreman. I hereby designate and select the International Longshoremen's and Warehousemen's Union as my exclusive representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

of longshoremen who voted in the June 1937 referendum, which was 7 in Port Blakely, 26 in Newport, and 14 in Point Orford. A statement²⁷ of the per capita tax paid by the longshore locals for the months of June and September 1937 indicates that, for Port Orford, Oregon, I. L. A. Local 38-115 paid a per capita tax in June on 24 members and that I. L. W. U. Local 1-5 paid a per capita tax in September for 24 members; that for Port Blakely, Washington, neither I. L. A. Local 38-2, nor I. L. W. U. Local 1-43 paid any per capita tax; and that for Newport, Oregon, I. L. A. Local 38-110 paid a per capita tax in June on 32 members and I. L. W. U. Local 1-53 paid a per capita tax in September on 34 members. Thus, it is evident that the results could not be affected by including the lists of longshoremen for these three ports.²⁸

Counsel for the I. L. A. and the I. L. A. Locals argued that the designation of representatives made in these cards should not be considered because of the fact that the men were forced to sign the cards. However, they presented no evidence whatsoever to support their contentions, except in the case of the port at Bellingham. The record would support the opposite contention, for the I. L. W. U. showed that it took great care to have no check made upon nonsigners and to have the signing of the cards a strictly voluntary act on the part of the men.

San Diego.—The longshoremen who have, in the last 6 months, been doing the longshore work in San Diego are the registered longshoremen who are members of I. L. W. U. Local 1-29, and permit card holders. A document²⁹ purporting to list the registered longshoremen in the Port of San Diego, furnished to the port by Waterfront Employers Association of Southern California, was introduced into evidence. However, D. C. Mays, president of I. L. W. U. Local 1-29, testified that the list was not up-to-date and that it included the names of men who have not been working in the port for some time. He introduced into evidence a list³⁰ of members of the Local as of February 11, 1938, and a list³¹ of permit card holders, also compiled from the records of the Local, and said that the men on these lists were those who have been doing the longshore work in the port during the last 6 months. In the absence of any objections to these lists and of any denial of their accuracy, we will accept them as representing the total of the longshore workers in the port. There are 83 registered men and 33 permit card holders.

²⁷ Petitioner Exhibit No. 74.

²⁸ Besides the cards, the returns on the June referendum are also strongly indicative of the sentiment of the longshoremen. The vote among the individual locals on the question of affiliation with the C. I. O. is set out in Appendix "H".

²⁹ Board Exhibit No. 23. This exhibit contains 137 names.

³⁰ Petitioner Exhibit No. 47.

³¹ Petitioner Exhibit No. 48.

Ninety-three cards designating the I. L. W. U. as the exclusive collective bargaining representative were introduced into evidence. These cards were witnessed by Mays and J. Wilbur, secretary of the Local. Each of the witnesses personally knew the men signing the cards. The names on the cards have been checked and have been found to correspond with the names on the lists.

"There is no I. L. A. Local operating in San Diego. The men are hired through the hiring hall which is maintained jointly by Local 1-29 and by Waterfront Employers Association of Southern California. Relations with employers are carried in the same manner as they were when the Local was I. L. A. Local 38-9.

Santa Barbara, Ventura and vicinity.—Substantially all the longshore work in these harbors was formerly done by members of I. L. A. Locals 38-105 and 38-129. These men are now members of I. L. W. U. Local 1-46.

Thirty-two cards were introduced into evidence. These cards were witnessed by Edmund Masson, secretary-treasurer of Local 1-46, who testified that he knew all the signers personally. His own card was also introduced. Masson identified the signature of Joseph Pico, whose card was not witnessed. The names on the cards have been checked and have been found to correspond to the names on a list of longshoremen furnished by Waterfront Employers Association of San Francisco." That list contains 75 names.

When a line is not drawn through the word "exclusively" in the sentence "I am employed exclusively as a longshoreman" the signer is a member of the Union; when a line is drawn through the word "exclusively" as it was in the case of 13 of the cards, the signer is not a registered longshoreman but has appeared on the pay roll of the ships coming into these ports and has worked on the boats. The latter group will be included in the unit.

San Pedro and Los Angeles harbor.—The work in the port is done by the registered longshoremen and the permit men. The latter group consists of men who are given work after the regular longshoremen have all been sent out. In the past these men made their living exclusively or substantially from longshore work, but at the present time work is slack and less than half of the men are receiving any work. Men on the permit list come and go; there is no indication that these men are now anything more than casuals. They will not be included in the unit.

"The list contains 75 names. Only 36 cards, altogether, were introduced into evidence. Masson testified that he did not know of any longshoremen regularly employed in the last 6 months in Santa Barbara and Ventura harbors who did not sign cards. It appears likely, therefore, that the list, which was submitted, pursuant to agreement, after the hearing had ended, contains many names of extra men. However, for the purpose of determining the question of majority, this list will be taken as accurate.

The cards of registered longshoremen that have been introduced into evidence have been compared with the list of longshoremen furnished to the Board by counsel for Waterfront Employers Association of Southern California and 2,209 cards were found to be signed by men on that list. There are 2,655 registered longshoremen.

The signing of the cards was witnessed by Ernest Bowen, president of I. L. W. U. Local 1-13, and Elmer Mevert, a member of the Local. These men knew most of the longshoremen personally. In case of doubt the signers were asked for their union membership books, so that their signatures could be compared.

I. L. W. U. Local 1-13 has about 2,516 members. It received its charter on October 7, 1937. Prior to that time the men had been in I. L. A. Local 38-82 which had some 2,640 members. The officials of I. L. A. Local 38-82 had been restrained by Court action from joining with the I. L. W. U. They, together with about 14 men who desired to remain in the I. L. A., and about 100 more men, stayed in I. L. A. Local 38-82, which had been restrained by the Courts from affiliating itself with the C. I. O. The 100 men remained in the I. L. A. Local "to protect the interests of the other 2,500." The cards included the cards signed by the men who have remained in the I. L. A. Local.

Everett, Washington.—The work in the Port of Everett is performed by the 258 longshoremen whose names appear on the list furnished by counsel for Waterfront Employers of Seattle. There are some called "permit men" who do work occasionally but they are not earning enough to support themselves and depend largely on other sources for their livelihood. They will not be included in the unit. Two hundred twenty-five of the registered longshoremen signed the cards.

H. F. McKennan, the dispatcher at Everett, stated that I. L. W. U. Local 1-32 came into existence as such in September 1937. Since then, the Labor Relations Committee has continued to function in the same way. The longshoremen are represented on the Committee by I. L. W. U. men; the companies have two local representatives and Ringenberg, of the Waterfront Employers of Seattle, on the Committee. There has been no change in the way the hiring hall has been operated. Dailey, who is the representative of the Employers Association in the Port, places the orders for longshoremen for all of the four or five companies which require longshore work in the port.

Before the change in affiliation, the Local was I. L. A. Local 38-76. There are no I. L. A. men in Everett at the present time.

*Aberdeen, Washington.*²²—Cards presented from the Port of Aberdeen were witnessed by Joseph Kit Koski and Les Lambert, who knew each of the signers personally. The work in the port is performed by the registered longshoremen of whom there are 386. One hundred seventy-five cards signed by registered longshoremen were presented in evidence. More cards have not been signed because of a rumor to the effect that signature would prevent the aliens, mostly Finns who were longshoremen in the port, from getting their citizenship papers, and because many of the longshoremen took the position that they had already voted to affiliate with the C. I. O., that they had their I. L. W. U. books, and that further signing of cards was unnecessary.

The men in the port are dispatched through the same hiring hall they have had since 1934. The dispatcher is an I. L. W. U. member. The Labor Relations Committee in the port consists of four representatives from the companies, including Ringenberg, of Waterfront Employers of Seattle, and four representatives of the Union. Since the coming into existence of I. L. W. U. Local 1-24, there has been no change in the way labor relations with the companies have been carried on.

The men were formerly organized in I. L. A. Local 38-77. There are now no I. L. A. men in the port.

*Port Gamble and Paulsbo, Washington.*²³—The work in Port Gamble is done by the 55 registered longshoremen named in the list of registered longshoremen submitted by Gregory Harrison. Fifty cards signed by these longshoremen were submitted in evidence. These cards were witnessed by William F. Falkner and Ward King, both of whom knew all the signers personally.

Since the change of affiliation, there has been no difference in the way labor relations in the port are handled. The men who did the work in the port were formerly members of I. L. A. Local 38-88; they are now members of I. L. W. U. Local 1-51.

Port Townsend, Washington.—The work in the port is done by the registered longshoremen and eight men who had been working in Ludlow,²⁴ where operations have ceased. These eight men, who derive their livelihood from longshore work, are dispatched from the hiring hall in Port Townsend after the registered longshoremen have been sent out. Thirty-two cards signed by registered longshoremen and Ludlow men²⁵ were introduced into evidence. There are 28 registered longshoremen.

²² The port is at Grays Harbor, which is centrally located between the towns of Hoquiam and Aberdeen.

²³ Port Gamble is 7 miles from the town of Paulsbo.

²⁴ Port Ludlow is 20 miles from Port Townsend by road or by water.

²⁵ The eight Ludlow men are Martin Parkko, Neil Stark, Oscar W. Henningson, George Woodley, Francis Patsy, Joseph Patsy, Alfred Eldridge, and William Woodley.

Four of the persons named on the list of registered longshoremen in Port Townsend have been transferred and are no longer active longshoremen. They are P. Popowski, C. Biewater, R. Ely, and H. Olsen.

The change in name and affiliation from I. L. A. Local 38-96 to I. L. W. U. Local 1-55 did not result in any change in the manner in which labor relations with employers are conducted. There are no I. L. A. men doing longshore work at the present time at Port Ludlow or Port Gamble.

Raymond, Washington.—The longshore work at Raymond is performed by the 116 registered longshoremen operating on a list of registered longshoremen at Willapa Harbor,³⁷ and casual workers. It is impossible for a casual worker to make his living at longshore work; they do longshore work along with various other odd jobs they can pick up. They will not be included in the unit.

One hundred seven cards signed by registered longshoremen and witnessed by Jack Price, who was at one time the dispatcher, and Bissenger, the present dispatcher, both of whom knew each of the signers personally, were introduced into evidence.

All the longshoring work is performed by members of I. L. W. U. Local 1-1. The present membership of the Local is substantially the same as the membership of I. L. A. Local 38-92, prior to the change in name and affiliation; there is no I. L. A. Local now functioning in Port Raymond.

The coming into existence of Local 1-1 did not result in any change in the manner in which labor relations are maintained, other than a decision to have the Labor Relations Committee meet every 30 days instead of irregularly. The three workers' representatives on the Labor Relations Committee are members of the I. L. W. U. Local.

Seattle, Washington.—The longshore work in the Port is performed by registered longshoremen, permit men, registered dock men, and grain handlers. Permit men are men who have not yet been admitted to the Union, although they will eventually become Union members. There is a separate board in the hiring hall for them. They contribute to the maintenance of the hiring hall, make their living exclusively by longshore work, and up until the recent slack period, have spent most of their time working as longshoremen.

Grain handlers are not registered longshoremen. They are men who do their own work first and are then sent out to do longshore work if they are needed. There is no indication that their longshore work is in any way regular and they will be excluded from the unit.

³⁷ Willapa Harbor is a consolidated Port for the towns of Raymond and South Bend. The Port of Willapa Harbor is centrally located between the two towns.

Frank Smith, vice president of I. L. W. U. Local 1-19, and at one time a dispatcher, witnessed cards of registered longshoremen and permit men. He testified that he knew each of the signers. Dewey Bennett,³² secretary of I. L. W. U. Local 1-19, and Thomas R. Richardson, president, also witnessed cards and testified as to the authenticity of the signatures.

A list of the registered longshoremen, dock men and permit men in Seattle contains 1,511 names.³³ One thousand three hundred forty-three of these men signed cards.

I. L. W. U. Local 1-19 is functioning under the old I. L. A. Local 38-12 constitution which they have changed in minor respects. The hiring hall has four I. L. W. U. dispatchers and is jointly maintained. The Local has used the same minute book from August 16, 1934, to March 3, 1938. There is no I. L. A. Local in Seattle whose members do any of the longshore work at the port.

Vancouver, Washington.—The longshore work in the Port of Vancouver is done by longshoremen hired through the hiring hall. No longshore work is performed by members of any I. L. A. Local.

The list of registered longshoremen includes grain handlers and dock workers. H. Mason, dispatcher at the hiring hall, checked the names of individuals on the roster of Vancouver longshoremen who are not regular longshoremen. Most of the names checked are those of casual workers. Fred Brown and H. Hopson have transferred from the Local. Of the 95 regular longshoremen, known personally to Mason, 87 signed cards which he witnessed.

*Reedsport, Oregon.*³⁴—All longshore work in the Port is now performed by members of I. L. W. U. Local 1-48 or by permit men who have put in applications to join the Union. When a boat comes into the dock, the captain or the mate of the ship tells the dispatcher, E. E. Doyle, a member of the Union, how many men he wants and the dispatcher telephones the men.

There is no list of registered men for the Port. Waterfront Employers Association of San Francisco supplied a list containing 28 names of longshoremen and permit men who are to be included in the unit. Twenty-three of these men signed cards witnessed by Tom Richman, secretary of the Local. He knows each of the men personally.

Rainier, Oregon.—No longshore work is performed in Rainier except by men hired from the hiring hall, which is jointly maintained by the employers and by the I. L. W. U. There is no I. L. A. Local

³² Bennett referred to "service men." From his description of that group, it is evident that he was referring to "permit men."

³³ Twelve men are deceased. They have not been counted.

³⁴ Reedsport is on Winchester Bay, about 28 miles from Coos Bay. Occasionally when help is needed, Coos Bay Local sends to Reedsport for extra men.

in Rainier whose members perform longshore work in the Port. Ray Williams, president of I. L. W. U. Local 1-45, which was, before the change in affiliation, I. L. A. Local 38-81, testified with respect to a list of longshoremen in the Port, that C. Girt, Byron Hirtzell, H. Jessee, and J. Rauch are casuals, A. Bustrim has quit longshoring work and John Bitte, while still a member of the Local, has not been working for a long period. Excluding these persons, 29 longshoremen are named on the list. Twenty-seven cards witnessed by Ray Williams were introduced. Williams knew the signers to be the persons whose names appear on the cards. His own card was witnessed by Marvin Girt, secretary of the Local.

Astoria, Oregon.—The work in the Port is performed by registered longshoremen and dock workers. The dock workers do the trucking on the dock when a ship comes in for salmon or flour. Although the dock workers are regular members of the Union, they do not work under the longshore arrangement and will therefore be excluded from the unit. The list of registered longshoremen and dock workers has been checked by A. Williams, a member of I. L. W. U. Local 1-50, which was, prior to the change in affiliation, I. L. A. Local 38-85. He has put a small "d" in front of the name of each dock worker, and a check mark in front of casual workers who do not make their living at longshore work and who are not to be included in the unit. There are 178 registered longshoremen. Ninety of these men signed cards.

North Bend, Oregon.—One hundred thirty-three cards signed by longshoremen who earn their living exclusively in longshore work in North Bend were witnessed by E. V. Schults, the recording secretary of I. L. W. U. Local 1-12. He was sure of the identity of each of the signers. The work in the Port is performed by I. L. W. U. members and permit men who are not members of the Union but who earn their living primarily or exclusively from longshore work in North Bend.

Schults has gone through the list of Coos Bay longshoremen⁴¹ and has put a check mark in front of the name of each person on the list who is not now a regular Coos Bay longshoreman. There are 140 names without checks.⁴²

St. Helens, Oregon.—C. Kremer, secretary of I. L. W. U. Local 1-68 at St. Helens, and C. Stewart, a member, put check marks in front of the names of casual workers who do not customarily make a living at longshore work, which appear on a list of St. Helens longshoremen prepared by Waterfront Employers of Portland. J. F.

⁴¹ North Bend is on Coos Bay Harbor.

⁴² Witness believed that there were other men working as longshoremen who are not on the list which was furnished by counsel for the companies, but the Union did not object to the use of the list.

Brown, whose name appears on the list, has died. C. Schmidt is an injured longshoreman who occasionally works a day or sometimes two or three days. He belongs to the Local. He will be included in the unit; casual workers will not be included.

Forty-one cards witnessed by Kremer and Stewart were introduced. Both witnesses knew the persons signing the cards to be the persons whose names appear on the cards. There are 73 persons on the list whose names were not checked.

Longview, Washington.—Dewey Van Brunt, the dispatcher at the hiring hall in Longview, checked through the roster of Longview longshoremen and put a check mark in front of the name of each person who is not a regular longshoreman. One hundred seventy-five of the 235 regular longshoremen signed cards. Van Brunt, who witnessed the signing of the cards, testified that he was personally acquainted with each of the signers.

Bandon and Port Orford, Oregon.—The torrential rains in the vicinity of Portland made it impossible for the men who could have testified with respect to the cards signed by the longshoremen in these two ports to get to the hearing. An exhibit in the form of a letter from the Waterfront Employers of San Francisco lists 21 longshoremen and 5 permit men who work at Bandon.

Newport, Oregon.—D. Harding, who witnessed the signing of the cards by Newport longshoremen, is an invalid and was unable to leave his home to attend the hearing. The Trial Examiner ruled that an affidavit by Harding concerning these cards was inadmissible.

Portland, Oregon.—The persons doing longshore work in Portland are classified as longshoremen, dock workers, grain handlers, miscellaneous workers, permit men, and Garibaldi men.

The miscellaneous group includes those who tie and untie ships and a few sweepers. They are not classified as regular longshoremen, and, since the record contains no further information concerning them, they must be excluded from the unit.

The Garibaldi men are those who used to work in the Port of Garibaldi which has been closed down because of sand drifting into the Port. The District prorated the longshoremen in the Port and 13 of them work in Portland. They will be included in the unit.

The grain handlers operate under a separate contract. However, they plug in on the same board as do the regular longshoremen. They do both grain work and regular longshoring work; they are required to take the grain job first, if there is any available. The usual bill of lading provides for the delivery of grain by the terminal or the

* Port Orford has a population of 300 and is located approximately 30 miles south of Bandon.

* Newport is a port on Yaquina Bay, about half way between the Columbia River and Coos Bay. It is a town with approximately 1,500 people.

shipper to the ship's side, rather than to the first place of rest on a ship's dock, as usually in the case of other cargo. The grain handler thus is a longshoreman with respect to the grain, carrying the grain to the ship if the grain is sacked, or operating the grain elevator or belt to the ship's side. When there is no grain work these men do regular longshoring work. The roster of longshoremen submitted by Waterfront Employers of Portland puts longshoremen, dock workers, and grain handlers together in one list. The grain handlers will be included in the unit.

Dock workers have a separate board in the hiring hall on which to plug in. Formerly their function was to transfer the cargoes from the railroad cars or trucks to the dock floor. For this they were paid 85 cents an hour. During the last 2 years, however, the method of operation has changed and lift machines and lift boards are used. The lift machines have a hoist running in front of carriers. The lift board is brought to the cargo and the cargo is placed on it. The machine then carries it to the ship's sling, the sling is put under the cargo, and the cargo is lifted to the boat. Work with this new method is classified as longshore work and the dock workers receive regular longshoremen's pay for doing it. Ninety per cent of the work done by dock workers is now classified as longshore work. Besides, dock workers also do the same type of work that longshoremen not classified as dock workers do; they are sent out on this work after the men on the "big board," which is the regular longshoremen's and grain handlers' board, have been sent out. Dock workers will be included in the unit. Permit men will also be included.

The lists supplied by Waterfront Employers of Portland name 1,099 longshoremen, including grain handlers and dock workers and 126 permit men. Seven hundred seventy-four cards were presented in evidence. The witnesses to the signing of the cards testified that they either knew the men personally, checked the signatures on the cards with the signatures on the Union book, or in the case of permit men, called in mutual friends when they were not sure of the identity of the signer.

Bellingham, Washington.—The longshore work at Bellingham is performed by the 159 men named on a list furnished by Gregory Harrison. One hundred thirty-seven of these men signed cards witnessed by John Mallahan, secretary-treasurer of I. L. W. U. Local 1-7, who knew each of the signers personally.

After the change in affiliation of the Bellingham Local, they continued to use the same quarters, the same minute book and the same equipment in the hall.

Action had been taken by the Local in January or February 1938 to the effect that anyone who did not sign a card would not be permitted to work for one week. Phil Taylor and Herman Dale tried to start an I. L. A. Local and applied to the I. L. A. for a charter. Local 1-7 fined both these men \$150 because of their activities. Dale has been injured since July 27, 1937, and has been unable to work. Taylor was not given any work after the fine had been imposed because he refused to pay the fine. L. B. Sulgrove, counsel for the I. L. A., stated that his purpose in introducing the testimony of Dale and Taylor was to show the method used to obtain the pledge cards and stated that more testimony was not introduced because men who testified would not be given any work.

It is only necessary to note that the action taken against Dale and Taylor was not because of failure to sign the cards, but because of their attempt to start an I. L. A. Local, that any action with respect to failure to sign was action taken by a majority of the Local, and that the secret ballot in the June 1937 referendum on the question of C. I. O. affiliation resulted in a vote of 124 to 12 in favor of such affiliation.

Tacoma, Washington.—The list * of registered longshoremen and registered dock workers at Tacoma contains 662 names.

Olympia, Washington.—The list * of registered longshoremen and permit men in Olympia contains 170 names.

Anacortes, Washington.—The list * of registered longshoremen in Anacortes contains 44 names.

Port Angeles, Washington.—The list * of the registered longshoremen in Port Angeles contains 114 names.

Eagle Harbor and Freeland, Washington.—The list of the longshoremen in Eagle Harbor and Freeland was furnished by the companies and contained 72 names.

Crescent City, California.—All the longshore work in this Port is performed by the 13 men who signed the cards. All but William Gettings earn their livelihood exclusively as longshoremen. Gettings works as an extra. He will not be included in the unit.

The list of registered longshoremen and permit men at Crescent City contains 15 names.

Monterey, California.—A. Martin Gallego, a longshoreman in Monterey, stated that there are only 17 longshoremen in the port and that other men who know how to do longshore work are called in when needed. The list submitted by Waterfront Employers Association of San Francisco, however, contains 77 names. On this state of the record, the list of the Association will be taken as accurate.

* Each of these lists has been submitted by the companies.

Gallego witnessed the signatures of eight men whom he knew personally. Gallego also identified the signature of Felix Urquida whose card was witnessed by M. B. Brown. Gallego could not identify the signatures of seven other men and this group of seven cards will not be considered.

Eureka, California.—Because the roads between Eureka and San Francisco had been washed out it was impossible for anyone who could authenticate the cards signed in the Port of Eureka to get to the hearing. A list of the longshoremen and "extras" in the Port of Eureka was presented in evidence. The "extras" are, in fact, permit men who are called upon after the regular longshoremen have been sent out. They will be included in the unit. The list contains 52 names.

San Francisco, California.—The hiring hall in San Francisco covers the San Francisco Bay region. Men work either on the "preferred" gangs which work for one company nearly all the time, or on "casual" gangs which may be dispatched to any employer at any time. There are 85 preferred gangs and 85 casual gangs in the port. The word "casual," in San Francisco, does not mean that a longshoreman is only occasionally employed but is used to distinguish the men on the casual gangs from those on the preferred gangs. There are also longshoremen in San Francisco who work from the "plug board," and who are used to fill vacancies in either preferred or casual gangs. The plug board is a board with a series of holes numbered in order. Longshoremen who work from the plug board are provided with a plug which is about 2 inches long and is of the thickness of a lead pencil and which bears a number corresponding with the number on the brass check which each longshoreman carries. The longshoreman puts his plug in the lowest numbered available hole and is sent out after all the men whose plugs preceded his have been sent out.

There are two types of permit men; those who are registered longshoremen and are not yet members of the Union, and those who are neither members of the Union nor registered longshoremen but who are working on permits issued by the joint Labor Relations Committee.

The longshoremen in all of the aforementioned groups are to be included in the unit. There are 4,039 names on the list of registered longshoremen at San Francisco and 345 permit men. Three thousand four hundred ninety-four cards of registered longshoremen and 289 cards of permit men, signed by men named on the list, and properly authenticated, were introduced into evidence.

Except in the case of a few cards, the cards are stamped "registered," indicating registered longshoremen; "member," indicating a

member of the Union; and "approved," indicating that the card is that of a permit man who is neither registered nor a member of the Union but who is entitled to work out of the hiring hall.

Summary

Port	Cards	Total number of employees	Port	Cards	Total number of employees
San Diego.....	93	116	Bandon.....	2	26
Santa Barbara, Ventura and vicinity.....	32	75	Port Orford.....		
San Pedro and Los Angeles Harbor.....	2,209	2,655	Newport.....		
Everett.....	225	256	Portland.....	774	1,099
Aberdeen.....	175	386	Bellingham.....	137	169
Port Gamble and Paulsbo.....	50	55	Tacoma.....		662
Port Townsend.....	32	36	Olympia.....		170
Raymond.....	107	116	Anacortes.....		44
Seattle.....	1,343	1,511	Port Angeles.....		114
Vancouver.....	87	95	Eagle Harbor.....		39
Rosport.....	23	28	Freeland.....		33
Rainier.....	27	29	Crescent City.....	12	15
Astoria.....	90	175	Monterey.....	9	77
North Bend.....	133	140	Eureka.....		52
St. Helens.....	41	73	San Francisco.....	3,753	4,394
Longview.....	175	235	Total.....	9,557	12,860

* This figure includes the eight Ludlow men.

The summary indicates that of the 12,860 longshoremen in the appropriate unit, 9,557 have signed cards designating International Longshoremen's and Warehousemen's Union, District No. 1, as their representative for purposes of collective bargaining.

We find that International Longshoremen's and Warehousemen's Union, District No. 1, has been designated and selected by the majority of the longshoremen in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the longshoremen in such unit for the purposes of collective bargaining, and we will so certify.

Upon the basis of the above findings of fact and upon the entire record of the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of longshoremen in the Pacific Coast ports of the United States, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The workers who do the longshore work in the Pacific Coast ports of the United States for the companies which are members of Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, Waterfront Employers Association of Southern California, and Shipowners Association of the Pacific Coast, constitute a unit appropriate for the

purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

3. International Longshoremen's and Warehousemen's Union, District No. 1, is the exclusive representative of all the workers in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended

IT IS HEREBY CERTIFIED that International Longshoremen's and Warehousemen's Union, District No. 1, has been designated and selected by a majority of the workers who do longshore work in the Pacific Coast ports of the United States for the companies which are members of Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, Waterfront Employers Association of Southern California, and Shipowners Association of the Pacific Coast, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of the Act, International Longshoremen's and Warehousemen's Union, District No. 1, is the exclusive representative of all such workers for the purposes of collective bargaining, in respect to rates of pay, wages, hours of employment and other conditions of employment.

APPENDIX A

1. International Longshoremen's and Warehousemen's Union, District No. 1.
2. Shipowners Association of the Pacific Coast.
3. Waterfront Employers Association of the Pacific Coast.
4. Waterfront Employers of Seattle.
5. Waterfront Employers of Portland.
6. Waterfront Employers Association of San Francisco.
7. Waterfront Employers Association of Southern California.
8. International Longshoremen's Association, District No. 38.
9. International Longshoremen's & Warehousemen's Union, Local 1-13.
10. Mr. A. H. Petersen.
11. International Longshoremen's Association, Local 38-82, Inc.
12. Ainsworth & Dunn Dock Company.
13. Alaska Steamship Company.

14. Albina Dock Company.
15. American Foreign S. S. Corp.
16. American-Hawaiian S. S. Co.
17. American Mail Line.
18. Ames Terminal Company.
19. Anderson & Middleton Lumber Co.
20. Anglo-Canadian Shipping Co.
21. Arlington Dock Company.
22. Arrow Stevedore Co.
23. Associated Banning Co.
24. Associated Banning Company (Berth 146).
25. Balfour, Guthrie & Co.
26. Barber Line.
27. Baxter & Company.
28. Beadle Steamship Co. Ltd.
29. Blue Funnel Line.
30. Blue Star Line.
31. Border Line Transportation Co.
32. Brady-Hamilton Steve. Co.
33. Bulk Carriers Corp.
34. Burns Steamship Company.
35. California Steve. & Ballast Co.
36. Canadian Transport Co.
37. Cargill, Incorporated.
38. Chamberlin S. S. Co. Ltd.
39. W. R. Chamberlin & Co.
40. Coastal Steamship Co.
41. Coastwise Line.
42. Columbia River Steve. Co.
43. Consolidated Olympic Line.
44. Coos Bay Lumber Company.
45. Crescent Wharf & Warehouse Co.
46. Deming, Roberg & Williams.
47. Dispatch Steve. & Cont. Co.
48. Dodwell Dock & Whse. Co., Inc.
49. Dollar Steamship Lines.
50. Dollar Steamship Lines Inc., Ltd.
51. Donaldson Line.
52. Donaldson Line (Balfour, Guthrie & Co.)
53. Katherine Donovan S. S. Co.
54. Donovan Lumber Co.
55. East Asiatic Company.
56. East-Waterway Dock & Whse. Co.
57. El Dorado Oil Works.
58. Elliott Bay Service Co.
59. Empire Lumber Co.
60. Everett Stevedoring Co.
61. S. S. Freeman Co.
62. French Line.
63. Fruit Express Line.
64. Furness (Pacific) Line.
65. General S. S. Corp.
66. General Steve. & Ballast Co.
67. Girdwood Shipping Company.
68. Gorman Lumber Co.
- 68-A. Gorman Steamship Co.
69. Grace Lines, Inc.
70. W. R. Grace & Company.
71. Gray & Owners, S. S. Daisy.
72. Grays Harbor Stevedore Co.
73. Great Northern Railway.
74. Griffiths & Sprague Steve.
75. James Griffiths & Sons, Inc.
76. Hamburg-American Line.
77. Hammond Lumber Company.
78. Hammond Shipping Co., Ltd.
79. J. R. Hanify Company.
80. Hart-Wood Lumber Co.
81. Chas. H. Higgins Co.
82. Hobbs-Wall & Company.
83. Holland-America Line.
84. Holmes Eureka Lumber Company.

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| 85. Independent Stevedore Co. | 118. J. E. Marshall, Inc. |
| 86. International Steve. Co. | 119. Matson Navigation Co. |
| 87. Interocean Line. | 120. Matson Terminals, Inc. |
| 88. Interocean Steamship Corp., Ltd. | 121. Matthews & Owners, S. S. Daisy. |
| 89. Interstate Terminals. | 122. McCormick S. S. Co. |
| 90. Italian Line. | 123. Metropolitan Stevedore Co. |
| 91. Johnson Line. | 124. Mitchell Stevedoring Co. |
| 92. A. B. Johnson Lumber Co. | 125. Mitsubishi Shojen Kaisha. |
| 93. W. J. Jones & Son. | 126. Mitsui & Co. |
| 94. The Jordan Company. | 127. J. J. Moore & Co., Inc. |
| 95. "K" Line. | 128. Moore S. S. Co. |
| 96. Kerr S. S. Company, Ltd. | 129. N. Y. K. Line. |
| 97. Kingsley Company of California. | 130. National S. S. Co. |
| 98. The Kingsley Co. of California. | 131. Nippon Yusen Kaisha. |
| 99. Kingsley Navigation Co. | 132. North German Lloyd. |
| 100. Kinney Shipping Company. | 133. North Pacific Coast Line. |
| 101. Kitsap Lumber Co. | 134. Northern Stevedores, Inc. |
| 102. Kitsap S. S. Company (San Pedro, Cal.). | 135. Northland Transportation Co. |
| 102-A. Kitsap S. S. Company (Tacoma, Wash.). | 136. Norton, Lilly & Co. |
| 103. Klaveness Line. | 137. Oceanic Terminals. |
| 104. Knutsen Line. | 138. John C. Ogden. |
| 105. Kolusai Kisen Kaisha. | 139. Fred Olsen Line. |
| 106. J. Lauritzen Line. | 140. The Olsen Line, Inc. |
| 107. Lawrence-Phillips Lumber Company. | 141. Fred Olson Line. |
| 108. Lawrence-Phillips S. S. Co. | 142. Oliver J. Olson & Co. |
| 109. Leslie Salt Company. | 143. Olympia Stevedoring Company. |
| 110. Mr. Fred Linderman. | 144. Olympic Steamship Co., Inc. |
| 111. L. A.-S. F. Navigation Co. | 145. Olympic Stevedoring Co. |
| 112. Luckenbach Gulf S. S. Co. | 146. Oregon Stevedoring Co. |
| 113. Luckenbach S. S. Company. | 147. Outer Harbor Dock & Wharf Co. |
| 114. Luckenbach Gulf Steamship Co. | 148. Owenis-Parks Lumber Co. |
| 115. H. E. Mansfield, Inc. | 149. P. L. Transportation Co. |
| 116. Marine Terminals Corp. (San Francisco). | 150. Pacific Argentine Brazil Line. |
| 117. Marine Terminals Corp. (Terminal Island, Cal.). | 151. Pacific-Atlantic S. S. Co. |
| | 152. Pacific Java Bengal Line. |
| | 153. Pacific Lighterage Corp. |
| | 154. Pacific Steve. & Ballasting Co. |

155. Panama Mail S. S. Company.
156. Paramino Lumber Co.
157. Portland Stevedoring Co.
158. Powell Shipping Company.
159. Prince Line.
160. Prince Line, Ltd.
161. Puget Sound Stevedoring Co.
162. Quaker Line.
163. Capt. J. Ramselius.
164. Redwood Steamship Co.
165. E. L. Reitz Lumber Company.
166. Reitz S. S. Co.
167. Rothschild - International Steve. Co.
168. Royal Mail Lines.
169. Royal Mail Lines, Ltd.
170. Salmon Terminals, Inc.
171. San Francisco Steve. Co.
172. Santa Ana S. S. Co.
173. Schafer Bros. Steamship Company.
174. Schafer Bros. S. S. Lines.
175. Schafer Bros. Steamship Lines.
176. Schirmer Stevedoring Co.
177. Seaboard Steve. Company.
178. Seaboard Steve. Corp.
179. Seaboard Stevedoring Corp.
180. Seaboard Steve. Corp. of Wash.
181. Shepard S. S. Company.
182. Sivertsen J. Martin Steve. Co.
183. States S. S. Co.
184. Soto Shipping Company, P. F.
185. Southland Steamship Co.
186. Southwestern Stevedoring Co.
187. Sudden & Christenson.
188. Supple Docks, Inc.
189. Swayne & Hoyt, Ltd.
190. Transatlantic S. S. Co.
191. Transpacific Transportation Co.
192. Twin Harbor Stevedoring Co.
193. Union Sulphur Co.
194. United Fruit Co.
195. United Ocean Transport Co., Ltd.
196. Viking Steamship Co.
197. Virginia Dock & Trading Co.
198. Washington Stevedoring Co.
199. Frank Waterhouse & Co. of Can. Ltd.
200. Western Stevedore Co.
201. Westfal-Larson Co. Line.
202. Weyerhaeuser S. S. Line.
203. Wheeler-Hallock Co.
204. Willapa Harbor Stevedoring Co.
205. E. K. Wood Lumber Co.
206. Wamashita Shipping Co. (Portland, Ore.)
207. Wamashita Shipping Co. (Seattle, Wash.)
208. International Longshoremen's Association, Local 38-142.
209. International Longshoremen's Association, Local 38-114.
210. International Longshoremen's Association, Local 38-97.
211. International Longshoremen's Association, Local 38-83.
212. International Longshoremen's Association, Local 38-86.

213. International Longshoremen's Association, Local 38-89.
214. International Longshoremen's Association, Local 38-78.
215. International Longshoremen's Association, Local 38-82.
216. International Longshoremen's Association, Local 38-79.
217. International Longshoremen's Association, District No. 38.

218. P. W. Walker.
219. R. A. Patterson.
220. C. H. Lindegren.
221. C. H. Lindegren.
222. M. D. Rogers.
223. Elmer Bruce.
224. O. M. Benton.
225. A. L. Bebo.
226. W. J. Hale.
227. Jack Edwardson.
228. J. O. Bowlbey.
229. Joe Sumpton.

APPENDIX B

SHIPOWNERS' ASSOCIATION

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| Anderson & Middleton Lumber Co. | Johnson Lumber Co., A. B. |
| Baxter & Co., J. H. | Kingsley Company of California. |
| Beadle Steamship Co., Ltd. | Kitsap Lumber Co. |
| Burns Steamship Co. | Lawrence-Philips Steamship Co. |
| Chamberlin & Co., W. R. | Linderman, Fred. |
| Coastal Steamship Co. | L. A.-S. F. Navigation Co. |
| Coastwise Steamship & Barge Co. | McCormick Steamship Co. |
| Consolidated Olympic Line. | Moore Steamship Co. |
| Coos Bay Lumber Co. | National Steamship Co. |
| Dispatch Stev. & Cont. Co. | Olson Line, Inc. |
| (Empire Lumber Co., charterers.) | (Olson & Co., Oliver J.) |
| Donovan Lumber Co. | Owens-Parks Lumber Co. |
| Freeman & Co., S. S. | P. L. Transportation Co. |
| Gorman Lumber Co. | Paramino Lumber Co. |
| Griffiths & Sons, James, Inc. | Ramselius, Capt. J. |
| (Griffiths Steamship Co.) | Redwood Steamship Co. |
| Hammond Shipping Co., Ltd. | Reitz Steamship Co. |
| Hanify Co., J. R. | Schafer Bros. Steamship Lines. |
| Hart-Wood Lumber Co. | Sudden & Christenson. |
| Higgins, Chas. H. | Southland Steamship Co. |
| Hobbs, Wall & Co. | Wheeler-Hallock Co. |
| | Wood Lumber Co., E. K. |

APPENDIX C

WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST

SHIPPING MEMBERS

Alaska Steamship Company.	Johnson Line.
American Foreign S. S. Corp.	A. B. Johnson Lumber Co.
American Hawaiian S. S. Co.	"K" Line.
American Mail Line.	Kerr S. S. Company, Ltd.
Anglo-Canadian Shipping Co.	Kingsley Navigation Co.
Barber Line.	Kitsap S. S. Company (Tacoma, Wash.)
Baxter & Company.	Kitsap S. S. Company (San Pedro, Cal.)
Blue Funnel Line.	Klaveness Line.
Blue Star Line.	Knutsen Line.
Bulk Carriers Corp.	Kokusai Kisen Kaisha.
Burns Steamship Company.	Lauritzen Line, J.
Canadian Transport Co.	Lawrence-Phillips S. S. Co.
Chamberlin S. S. Co. Ltd.	Mr. Fred Linderman.
Coastal Steamship Co.	Luckenbach S. S. Company.
Coastwise Line.	Matson Navigation Co.
Consolidated Olympic Line.	McCormick S. S. Co.
Coos Bay Lumber Company.	Mitsui & Co.
Donaldson Line.	Moore S. S. Co.
Katherine Donovan S. S. Co.	National S. S. Co.
East Asiatic Company.	North German Lloyd.
Empire Lumber Co.	Northland Transportation Co.
S. S. Freeman Co.	Norton, Lilly & Co.
French Line.	N. Y. K. Line.
Fruit Express Line.	John C. Ogden.
Furness (Pacific) Line.	Fred Olsen Line.
General S. S. Corp.	Oliver J. Olson & Co.
Girdwood Shipping Company.	Olsen Line, Inc.
Gorman Steamship Co.	Owens-Parks Lumber Co.
Grace Lines, Inc.	Pacific-Atlantic S. S. Co. (Quaker Line).
James Griffiths & Sons, Inc.	Panama Mail S. S. Company.
Hamburg-American Line.	Paramino Lumber Co.
Hammond Shipping Co., Ltd.	P. L. Transportation Co.
J. R. Hanify Company.	Prince Line, Ltd.
Hart-Wood Lumber Co.	Capt. J. Ramselius.
Chas. H. Higgins Co.	Reitz S. S. Co.
Hobbs-Wall & Company.	Royal Mail Lines, Ltd.
Holland-America Line.	
Interocean Line.	
Italian Line.	

Santa Ana S. S. Co.
 Schafer Bros. S. S. Lines.
 Schafer Bros. Steamship Lines.
 Shepard S. S. Company.
 States S. S. Co.
 Sudden & Christenson.
 Swayne & Hoyt, Ltd.
 Transatlantic S. S. Co.
 Transpacific Transportation Co.
 Union Sulphur Co.

United Fruit Co.
 United Ocean Transport Co., Ltd.
 Viking Steamship Co.
 Frank Waterhouse & Co. of Canada, Ltd.
 Westfal-Larson Co. Line.
 Weyerhaeuser S. S. Line.
 Wheeler-Hallock Co.
 Wood Lumber Co., E. K.
 Yamashita Shipping Co.

ASSOCIATE MEMBERS

Ainsworth & Dunn Dock Company.	Interstate Terminals.
Albina Dock Company.	W. J. Jones & Son Inc.
Ames Terminal Company.	The Jordan Company.
Arlington Dock Company.	Leslie Salt Company.
Associated Banning Company.	Longview Stevedoring Company.
B. & H. Stevedoring Corp.	H. E. Mansfield Inc.
Bellingham Contracting & Stevedoring Co.	Marine Terminals Corp.
Brady Hamilton Stevedore.	Mitchell Stevedoring Co.
Cargill Incorporated.	Mitchell Stevedoring Company.
Columbia Basin Terminals.	Northern Stevedores Inc.
Columbia River Stevedoring Company.	Oceanic Terminals.
Deming, Roberg & Williams, Inc.	Olympia Stevedoring Co.
Dispatch Stevedore & Contracting Company.	Olympic Stevedore Co.
Dodwell Dock & Warehouse Co.	Oregon Stevedoring Company.
East Waterway Dock & Warehouse Co.	Pacific Stevedoring & Ballasting Co.
El Dorado Terminal Co.	Portland Stevedoring Co.
Elliott Bay Service Company.	Powell Shipping Co.
Everett Stevedoring Company.	Puget Sound Stevedoring Co.
General Stevedore & Ballast Co.	Rothschild International Stevedore Co.
Grays Harbor Stevedore Company.	Salmon Terminals.
Griffiths & Sprague Stevedoring Co.	The San Francisco Stevedoring Co.
Independent Stevedore Company.	Stevedore Service Co.
International Stevedoring Company.	Supple Docks Inc.
	Thomas & Kear.
	Twin Harbor Stevedoring Co.
	Washington Stevedoring Co.
	Western Stevedore Co.
	Willapa Harbor Stevedoring Co.

APPENDIX D

WATERFRONT EMPLOYERS OF SEATTLE MEMBERSHIP LIST

DEC. 7, 1937

Ainworth & Dunn Dock Co.	Fruit Express Line.
Alaska Steamship Company.	(International Pacific Coast Corp.)
Ames Terminal Company.	Furness (Pacific) Ltd.
American Foreign S. S. Corp.	(Burchard & Fiskén, Agents.)
(Matthewson Shipping Co., Agents.)	Girdwood Shipping Co.
American-Hawaiian Steamship Co.	Grace Line (W. R. Grace & Co.).
American Mail Line.	Grays Harbor Stevedore Co.
Anglo-Canadian Shipping Co.	Great Northern Ry.
(Girdwood Shipping Co., Agents.)	Griffiths & Sprague Stevedoring.
Arlington Dock Company.	Griffiths, James & Son.
Arrow Line.	Hamburg-American Line.
(Sudden & Christenson.)	(Sudden & Christenson.)
Blue Funnell Line.	Hammond Shipping Co.
(Dodwell & Co., Ltd., Agents.)	Johnson Line of Stockholm.
Blue Star Line, Inc.	(W. R. Grace & Co.)
Border Line Transportation Co.	Jordan, The Company.
Canadian Transport Company.	Kingsley Co. of California.
(Paul A. Umoff, Agent.)	Kerr S. S. Co. (Silver Java Pacific).
Cargill, Incorporated.	(Burchard & Fiskén, Agents.)
Coastal Steamship Company.	Klaveness Line.
Coastwise Line.	(Sudden & Christenson.)
Deming, Roberg & Williams.	Knutsen Line.
Dodwell Dock & Whse. Co., Inc.	(Interocean S. S. Corp.)
Donaldson Line.	Lauritzen Line, J.
(Balfour, Guthrie & Co.)	(Girdwood Shipping Co., Agents.)
East Asiatic Company, Inc.	Leslie Salt Co.
East Waterway Dock & Whse. Co.	Libera Line.
Elliott Bay Service Co.	(General S. S. Co., Agents.)
Everett Stevedoring Co.	Luckenbach Gulf Steamship Co.
Fred Olson Line.	Luckenbach Steamship Co., Inc.
(Girdwood Shipping Co., Agents.)	Matson Navigation Co.
French Line.	(Alexander & Baldwin.)
(General S. S. Co.)	Matson Terminals, Inc.
	Mitchell Stevedoring Co.

Moore, J. J. & Co., Inc. (W. L. Macquarrie, Agent.)	Royal Mail Lines, Ltd.
McCormick Steamship Co.	Salmon Terminals, Inc.
Mansfield, Inc., H. E.	Santa Ana Steamship Co.
Nippon Yusen Kaisha.	Seaboard Stevedoring Corp. of Wash.
North German Lloyd.	Shepard Steamship Company.
Northern Stevedores, Inc.	Swayne & Hoyt, Ltd.
Northland Transportation Co.	Transatlantic S. S. Co., Ltd. (General S. S. Co.)
Norton, Lilly & Co. (Agents for Isthmian S. S.)	Twin Harbor Stevedoring Co.
Olympia Stevedoring Company.	Virginia Dock & Trading Co.
Olympic Steamship Co., Inc. (Consolidated-Olympic S. S. Co.)	Washington Stevedoring Co.
Olympic Stevedoring Co.	Waterhouse, Frank & Co. of Canada.
Pacific Java-Bengal Line. (Burchard & Fiskén, Agents)	Western Stevedore Co.
Puget Sound Stevedoring Co.	Westfal-Larsen Line. (General S. S. Co.)
Quaker Line.	Weyerhaeuser Steamship Co.
Rothschild-International Stevedoring Co.	Willapa Harbor Stevedoring Co.
	Yamashita Shipping Co.

APPENDIX E

WATERFRONT EMPLOYERS OF PORTLAND MEMBERSHIP ROSTER AS OF FEBRUARY 3, 1938

American Hawaiian S. S. Co.	Kinney Shipping Company.
American Mail Line.	J. Lauritzen Line.
Anglo Canadian S. S. Co.	Luckenbach Steamship Co.
Balfour Guthrie & Co.	Matson Navigation Company.
Bulk Carriers Corp.	McCormick Steamship Co.
Chamberlin S. S. Co.	North German Lloyd.
Coastwise Line.	North Pacific Coast Line.
Fred. Olsen Line.	Pacific Argentine Brazil Line.
French Line.	Powell Shipping Company.
Fruit Express Line.	Schafer Bros. S. S. Co.
Furness (Pacific) Ltd.	States Steamship Co.
General Steamship Corp.	Sudden & Christenson.
Grace Line.	Swayne & Hoyt.
Hammond Shipping Co., Ltd.	Transpacific Transp. Co.
Italian Line.	Weyerhaeuser Steamship Co.
Johnson Line.	Wheeler-Hallock Co.
Kerr Steamship Company.	Yamashita Shipping Co.

STEVEDORES

Brady-Hamilton Steve.
International Steve. Co.
W. J. Jones & Son.

Oregon Stevedoring Co.
Portland Stevedoring Co.
Seaboard Stevedoring Corp.

STEVEDORES—OUTPORTS

Columbia River Steve. Co.

Independent Stevedore Co.

DOCK OPERATORS

Albina Dock Company.
Interstate Terminals.
Oceanic Terminals.

Supple Docks, Inc.
Total—46 members.

APPENDIX F**MEMBERS OF WATERFRONT EMPLOYERS ASSOCIATION OF SAN FRANCISCO****SHIPPING AND STEVEDORE MEMBERS**

American-Hawaiian SS Co.
Arrow Stevedore Co.
Associated Banning Co.
Calif. Steve. & Ballast Co.
Coos Bay Lumber Co.
Dollar Steamship Lines.
Donaldson Line, Ltd.
French Line.
Furness (Pacific) Ltd.
General Steamship Corp.
General Steve. & Ballast Com-
pany.
Grace Line.
Hamburg American Line.
Holland America Line.
Johnson Line.
Kerr Steamship Company.

Luckenbach SS Company.
Luckenbach Gulf SS Co.
Marine Terminals Corp.
Matson Navigation Co.
McCormick Steamship Co.
North German Lloyd.
Pacific Lighterage Corp.
Mitchell Stevedoring Co.
Panama Mail Steamship Co.
San Francisco Steve. Co.
Schirmer Stevedoring Co.
Seaboard Steve. Corp.
Sivertsen J. Martin Steve. Com-
pany.
Swayne & Hoyt, Ltd.
Transpacific Transp. Co.
United Fruit Company.

ASSOCIATE MEMBERS

Chamberlin, W. R. & Co.
El Dorado Oil Works.
Hammond Shipping Co., Ltd.

The Kingsley Co. of Calif.
Pacific Stevedoring & Ballasting
Co.

APPENDIX G

MEMBERSHIP LIST OF WATERFRONT EMPLOYERS ASSOCIATION OF
SOUTHERN CALIFORNIA

DECEMBER 30, 1937

- American Hawaiian Steamship Company.
 Arrow Line. (See Sudden & Christenson.)
 Associated Banning Company.
 Bank Line. (See Marshall, Inc., J. E.)
 Barber Line:
 Barber Steamship Lines, Inc.
 Barber Wilhelmson Line.
 Baxter & Company, J. H.
 Blue Funnell Line (c/o Dodwell & Company).
 Blue Star Line. (See Marine Terminals Corp.)
 Calmar Line. (See Swayne & Hoyt, Ltd.)
 Chamberlin Steamship Company, W. R.
 Coos Bay Lumber Company.
 Crescent Wharf & Warehouse Company.
 Dollar Steamship Lines Inc., Ltd.:
 Tacoma & Oriental Steamship Company.
 Mexican Mail Steamship Company.
 French Line. (See General Steamship Corp., Ltd.)
 Fruit Express Line (c/o Dodwell & Company).
 Furness Line (c/o Furness (Pacific) Ltd.).
 General Steamship Corporation, Ltd.:
 French Line.
 Libera Line (Italian Line).
 Shepard Line.
 Silver Line.
 Transatlantic Steamship Company of Gothenberg.
 United Ocean Transport Company.
 Westfal Larsen Company.
 Silver Java Pacific Line }
 Kerr Steamship Company } Pacific Java Bangal Line.
 Grace & Company, W. R.:
 Panama Mail Steamship Company.
 Johnson Line.
 Gray & Owners, S. S. Daisy, c/o Freeman & Co., SS.
 Gulf Pacific Line. (See Swayne & Hoyt, Ltd.)
 Gulf Pacific Mail Line. (See Swayne & Hoyt, Ltd.)
 Hamburg-America Line. (See Sudden & Christenson.)

Hammond Lumber Company:

Hammond Shipping Company.

Hanify, J. R.

Holland-America Line, c/o Furness (Pacific) Ltd.

Holmes Eureka Lumber Company (Redwood Steamship Company).

Interocean Steamship Corp., Ltd.:

Interocean Line.

"K" Line (Kawasaki Kisen Kaisha).

Knutsen Line.

Pacific Coast Direct Line.

Weyerhaeuser Steamship Company.

Isbrandtsen-Moller (Maersk Line). (See Soto Shipping Co., P. F.)

Johnson Line. (See Grace & Company, W. R.)

"K" Line (Kawasaki Kisen Kaisha). (See Interocean Steamship Corp.)

Kerr Steamship Company. (See General Steamship Corp., Ltd.)

Kingsley Company of California, c/o McCormick Steamship Company.

Klaveness Line. (See Sudden & Christenson.)

Knutsen Line. (See Interocean Steamship Corp.)

Lawrence-Philips Lumber Company.

Libera Line (Italian Line). (See General Steamship Corp.)

Luckenbach Steamship Co., Inc.:

Luckenbach Gulf Steamship Company.

McCormick Steamship Company:

McCormick Lumber Company, Chas. R.

Marine Terminals Corp.:

Blue Star Line.

Marshall, Inc., J. E.:

Bank Line.

Matson Navigation Company:

Matson Steamship Company.

Matson Terminals Corp.

Oceanic Steamship Company.

Matthews & Owners, Daisy, c/o Freeman & Company, S. S.

Metropolitan Stevedore Company.

Mexican Mail Steamship Company. (See Dollar Steamship Lines, Inc., Ltd.)

Mitsubishi Shojen Kaisha, c/o Wickersham & Co., W. H.

Nippon Yusen Kaisha.

Oceanic Steamship Company. (See Matson Navigation Company.)

Olsen Line, Fred. (See Soto Shipping Co., P. F.)

Olson & Co., Oliver J.

- Outer Harbor Dock & Wharf Company.
 P. L. Transportation Company (Pacific Lumber Company).
 Pacific Coast Direct Line. (See Interocean Steamship Corp.)
 Panama Mail Steamship Lines. (See Grace & Co., W. R.)
 Prince Line, c/o Furness (Pacific) Ltd.
 Ramselius & Company, J.
 Reardon Smith Line. (See Sudden & Christenson.)
 Reitz Lumber Company, E. L.
 Royal Mail Lines, c/o Furness (Pacific) Ltd.
 Schafer Bros. Steamship Company.
 Seaboard Steve. Company.
 Shepard Line. (See General Steamship Corp., Ltd.)
 Silver Line. (See General Steamship Corp., Ltd.)
 Silver Java Pacific Line. (See General Steamship Corp., Ltd.)
 Southwestern Stevedoring Company.
 Soto Shipping Company, P. F.:
 Isbrandtsen Moller Company (Maersk Line).
 Olsen Line, Fred.
 Sudden & Christenson:
 Arrow Line.
 Hamburg American Line.
 Klaveness Line.
 Reardon Smith Line.
 Swayne & Hoyt, Ltd.:
 Calmar Line.
 Gulf Pacific Line.
 Gulf Pacific Mail Line.
 Tacoma & Oriental Steamship Company. (See Dollar Steamship Lines Inc. Ltd.)
 Transatlantic Steamship Company of Gothenberg. (See General SS Corp. Ltd.)
 United Fruit Company.
 United Ocean Transport Company. (See General Steamship Corp., Ltd.)
 Westfal Larsen Company. (See General Steamship Corp., Ltd.)
 Weyerhaeuser Steamship Company. (See Interocean Steamship Corp., Ltd.)
 Wood Lumber Company, E. K.

APPENDIX H

RESULTS OF BALLOT—PACIFIC COAST DISTRICT I. L. A.

Question: "Shall we affiliate with the C. I. O.?"

Local No.	City	Yes	No	Local No.	City	Yes	No
38-2	Port Blakely	5	2	38-115	Port Orford	14	0
38-4	Bandon	13	3	38-116	Ketchikan	15	4
38-9	San Diego	69	4	38-117	Seattle	257	43
38-12	Seattle	836	296	38-118	Sacramento	142	8
38-36	Seattle	37	90	38-119	Wilmington	50	16
38-44	San Francisco	2,445	411	38-120	San Diego	64	3
38-67	Vancouver	91	39	38-122	Tacoma	2	0
38-76	Everett	734	169	38-123	Portland	331	59
38-77	Aberdeen	7	87	38-125	Ventura	15	0
38-78	Portland	7	87	38-126	Vancouver	58	33
38-78A	Portland	2,220	703	38-130	Victoria	80	5
38-79	San Francisco	145	12	38-131	Bellingham	22	8
38-80	Longview	15	14	38-132	San Francisco	81	7
38-85A	Astoria	1,800	444	38-135	Portland	236	0
38-92	San Pedro	4	22	38-137	Hilo, Hawaii	16	0
38-93	Anacortes	40	43	38-140	Monterey	14	0
38-94	St. Helens	143	2	38-142	Skagway	15	0
38-96	Port Angeles	91	227	38-143	Tacoma	23	2
38-98	Poulsbo	63	9	38-104	Juneau	55	0
38-99	Olympia	100	1	38-145	Ketchikan	12	5
38-90	San Francisco	104	2	38-146	Stockton	7	3
38-91	San Pedro	58	12	38-147	New Westminster	31	1
38-92	Raymond	11	0	38-78	Portland	7	1
38-93	Stockton	26	0	38-81	Rainier	69	83
38-94	North Bend	126	320	38-85	Astoria	164	11
38-95	Winchester Bay	124	15	38-94A	North Bend	100	0
38-96	Port Townsend	178	22	38-109	Stockton	97	7
38-97	Tacoma	46	11	38-112	Cordova	46	11
38-98	Bellingham	18	2	38-121	Harbor	44	6
38-100	San Francisco	35	258	38-124	San Francisco	16	7
38-101	San Francisco	2	24	38-127	New Westminster	9	1
38-102	Stockton	9	1	38-129	Seward	282	23
38-103	Eureka	9	1	38-134	Los Angeles	257	2
38-105	Santa Barbara	9	1	38-136	Honolulu	2	2
38-106	Los Angeles	9	1	38-138	Seattle	8	3
38-107	San Pedro	9	1	38-141	Valdez	8	3
38-108	Stockton	9	1	38-143	Sitka	8	3
38-110	Newport	9	1	38-149	Portland	8	3
38-111	Crescent City	9	1	38-150	Seattle	8	3
38-113	Seattle	9	1				
38-114	Tacoma	9	1				

* Gardibaldi Local men in 38-78.

We could have had
probably half the
industry if separate
votes taken

[fol. 62]

EXHIBIT "B" TO PETITION

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. R-638

IN the Matter of SHIPOWNERS' ASSOCIATION OF THE PACIFIC COAST, WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST, THE WATERFRONT EMPLOYERS OF SEATTLE, THE WATERFRONT EMPLOYERS OF PORTLAND, THE WATERFRONT EMPLOYERS ASSOCIATION OF SAN FRANCISCO, THE WATERFRONT EMPLOYERS ASSOCIATION OF SOUTHERN CALIFORNIA, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, DISTRICT NO: 1

Case No. R-572

IN the Matter of WATERFRONT EMPLOYERS ASSOCIATION OF SOUTHERN CALIFORNIA and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 1-13

OBJECTIONS, EXCEPTIONS AND MOTIONS OF THE AMERICAN FEDERATION OF LABOR, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, WEST COAST LOCALS

Now come the American Federation of Labor, and those International Longshoremen's Association, West Coast Locals, which are affiliated with the American Federation of Labor and specifically described in the opinion of the Board in cases R-638 and R-572, hereinafter called petitioners, by Joseph A. Padway, attorney, and upon all the records, files and proceedings in the above entitled matter, file the following exceptions, objections and motions.

Petitioners object and except to the order of certification of the National Labor Relations Board in the above entitled matter, such order of certification being dated the 21st day of June, 1938, certifying the International Longshoremen's and Warehousemen's Union, District 1, as the exclusive representative for the purpose of collective bargaining of all the workers who do longshore work in the Pacific Coast ports of the United States for the companies which are members of Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, Waterfront Employers Association of [fol. 63] Southern California, and Ship Owners Association

of the Pacific Coast, for the reason that such certification is contrary to law, and contrary to the facts as set forth in the said Board's findings of fact in the above entitled matter, and for the reason that such certification is contrary to the spirit, purpose and intent of the National Labor Relations Act in that said National Labor Relations Act does not contemplate and does not lawfully permit an employee unit constituting all the employees of different employers in different and distant geographical districts of the United States.

Further, that petitioners have been denied rights accorded them under the National Labor Relations Act, particularly under Section 7 thereof, which states:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

That petitioners have been denied such rights for the reason that the Board's findings of fact herein state that certain distinct groups of employees are members of separate unions, in different geographical locations, and that the members in each of such unions constitute a majority of the employees employed in the longshore work in the respective cities where such unions are located; that such unions are affiliated with the American Federation of Labor and constitute the petitioners herein; that such majority of members in each such union has constituted each such union as its bargaining representative to negotiate with respective employers concerning wages, hours and working conditions; that the order of certification unlawfully denies to the petitioners the right of self-organization and representation as hereinbefore set forth.

That for the foregoing reasons the said order of certification of the said Board is void and of no effect; and furthermore, that said order of certification constitutes an unconstitutional denial of property and other valuable rights to the American Federation of Labor and its affiliated unions and the members thereof involved in the above entitled matter, petitioners herein.

Petitioners further state that by such unlawful order of certification their rights have been grievously and adversely affected and therefore petitioners appeal to said Board for

a rehearing and a reconsideration of the Board's decision in this case.

Wherefore petitioners pray and move for a rehearing and a reconsideration of said case on the basis of the objections hereinbefore urged, and for a reversal of said order of certification.

Petitioners further pray that immediate consideration be given this application for leave for rehearing so that their rights may be expeditiously determined, for the reason that present and future contractual rights are involved and dependent upon the decision of the Board.

Joseph A. Padway, Counsel, American Federation of Labor, International Longshoremen's Association, West Coast Locals.

August 15, 1938.

[fol. 64]

EXHIBIT "C" TO PETITION

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 27th day of August, 1938.

Present: J. Warren Madden, Chairman; Donald Wakefield Smith.

Case No. R-638

In the Matter of SHIPOWNERS' ASSOCIATION OF THE PACIFIC COAST, WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST, THE WATERFRONT EMPLOYERS OF SEATTLE, THE WATERFRONT EMPLOYERS OF PORTLAND, THE WATERFRONT EMPLOYERS ASSOCIATION OF SAN FRANCISCO, THE WATERFRONT EMPLOYERS ASSOCIATION OF SOUTHERN CALIFORNIA, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, DISTRICT No. 1

Case No. R-572

In the Matter of WATERFRONT EMPLOYERS ASSOCIATION OF SOUTHERN CALIFORNIA and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 1-13

ORDER OVERRULING OBJECTIONS AND EXCEPTIONS AND DENYING MOTION

The Board having issued a Decision and Certification of Representatives in the above-entitled proceeding, and, there-

after American Federation of Labor, International Longshoremen's Association, West Coast Locals, having filed objections and exceptions to said Certification, and a motion for a rehearing and reconsideration of said Decision and for a reversal of said Certification, and the Board having duly considered the matter,

It is Hereby Ordered that said objections and exceptions be, and they hereby are, overruled, and that said motion be, and it hereby is, denied.

By direction of the Board:

Beatrice M. Stern, Assistant Secretary.

[fol. 65]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

AMENDMENT TO PETITION TO REVIEW AND SET ASIDE ORDER
OF NATIONAL LABOR RELATIONS BOARD DATED JUNE 21ST,
1938—Filed October 21, 1938

Comes now, American Federation of Labor, International Longshoremen's Association, and Pacific Coast District International Longshoremen's Association No. 38, the petitioners in the above entitled action and amend paragraph 8 of its Petition to Review and Set Aside Order of National Labor Relations Board Dated June 21st, 1938, heretofore filed herein, by adding under said paragraph 8, the following:

"That on the 30th day of September 1938, pursuant to and in accordance with said order and decision, the said International Longshoremen's and Warehousemen's Union, District #1, as exclusive bargaining agent and representative of longshore employees employed by all employers, engaged in the handling or transportation of water-borne cargo on the Pacific Coast of the United States, through its president, Harry R. Bridges, entered into a collective bargaining agree-[fol. 66] ment respecting wages, hours and working conditions with the Ship Owners Association of the Pacific Coast on behalf of the Waterfront Employers of Seattle, the

Waterfront Employers of Portland, the Waterfront Employers Association of San Francisco and the Waterfront Employers Association of Southern California, through its president, R. W. Myers. That said contract provided among other things, that preferential employment be given members of the said International Longshoremen's and Warehousemen's Union, District #1, by said employers' associations. That said Employer Associations aforementioned have recognized the International Longshoremen's and Warehousemen's Union affiliate of the Committee of Industrial Organization as the exclusive bargaining agent of all longshore employees on the Pacific Coast. That by virtue of the decision and order of the Board and by virtue of Section 8 (3) of the Act the International Longshoremen's and Warehousemen's Union and the Employers Association may enter into a so-called closed shop contract whereby employees who are members of the International Longshoremen's Union affiliate of American Federation of Labor may be discharged and their jobs replaced by members of the International Longshoremen's and Warehousemen's Union.

Dated, October 18, 1938.

Herbert S. Thatcher, Joseph A. Padway, Counsel for
Petitioners.

[fol. 67] AFFIDAVIT OF SERVICE UPON NATIONAL LABOR RELATIONS BOARD OF AMENDMENT TO PETITION TO REVIEW AND SET ASIDE ORDER OF NATIONAL LABOR RELATIONS BOARD, DATED JUNE 21st, 1938

William K. Sherwood, of lawful age, upon his oath, declares and states, that he is a resident of the District of Columbia, and that on the morning of October 21st, 1938, he did serve personally upon Mr. Holliday, attorney for the National Labor Relations Board, two copies of the Amendment to Petition to Review and Set Aside Order of National Labor Relations Board dated June 21st, 1938, in the case of American Federation of Labor, International Longshoremen's Association and Pacific Coast District International Longshoremen's Association No. 38, Petitioners, vs. National Labor Relations Board, Respondent, in the

United States Court of Appeals, for the District of Columbia, April Term 1938, No. 7257.

William K. Sherwood.

Subscribed and sworn to before me this 21st day of October, 1938. Thomas L. Kelly, Notary Public for the District of Columbia. My Commission expires July 1, 1940. (Seal.)

[fol. 68] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION UNDER SPECIAL APPEARANCE (MOTION TO DISMISS)—
Filed October 22, 1938

To the Honorable, The Judges of the United States Court of Appeals, for the District of Columbia:

Now comes the National Labor Relations Board, hereinafter referred to as the Board, by its attorneys, appearing specially, and moves the Court to dismiss the petition to review and set aside the Board's decision and certification, and for its grounds, respectfully states as follows:

1. Petitions having been filed alleging that a question affecting commerce had arisen concerning representation of employees and requesting an investigation and certification of representatives, the Board on June 21, 1938, pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, duly issued a Decision and Certification of Representatives in the proceeding before it entitled "*In the Matter of Shipowners' Association of the Pacific Coast, Waterfront Employers Association of the Pacific Coast, The Waterfront Employers of Seattle, The Waterfront Employers of Portland, The Waterfront Employers Association of San Francisco, The Waterfront Employers Association of Southern California*, [fol. 69] and *International Longshoremen's and Warehousemen's Union, District No. 1; In the Matter of Southern California and International Longshoremen's and Warehousemen's Union, Local 1-13*"—Cases Nos. R-638 and R-

572. Said Decision and Certification of Representatives was made at the end of an investigatory proceeding, duly undertaken by the Board, pursuant to the provisions of Section 9 (c) of the Act.

2. On August 15, 1938, American Federation of Labor, International Longshoremen's Association, and Pacific Coast District of International Longshoremen's Association No. 38, petitioners herein, filed a motion with the Board for a rehearing and reconsideration of said cases, and set forth therein certain objections and exceptions to said Decision and Certification of Representatives.

3. On August 27, 1938, the Board overruled the petitioners' said objections and exceptions, and denied said motion.

4. Thereafter, on September 29, 1938, petitioners filed in this Court their petition to review and set aside said Decision and Certification of the Board dated June 21, 1938.

5. The jurisdiction of the United States Circuit-Courts of Appeals and the United States Court of Appeals for the District of Columbia is obtained solely by virtue of Acts of Congress. The National Labor Relations Act is the only Act of Congress which grants jurisdiction to the United States Circuit Courts of Appeals and to the United States Court of Appeals for the District of Columbia to review actions of the Board, and which contains provisions for such review. Review is accordingly limited to the provisions of that Act.

6. This Court has no jurisdiction to entertain the petition herein, or to grant the prayers thereof. Sections 10 (e) and 10 (f) are the only sections of the National Labor Relations Act granting jurisdiction to the Circuit Courts of Appeals and the Court of Appeals for the District of Columbia to review actions of the Board. Of these, Section 10 (e) applies solely to reviews sought by the Board.

7. Section 10 (f), as well as 10 (e), applies only to the review of orders of the Board issued under Section 10 (c) of said Act, requiring employers to cease and desist from unfair labor practices prohibited by Section 8. The action of the Board in the matter now sought to be reviewed did not relate to any alleged unfair labor practice under Sec-

tion 8 of the Act, did not and could not lead to any cease and desist order under Section 10 (c) of said Act, relating to such unfair labor practices, and in no way comes within the limited review afforded with respect to cease and desist orders of the Board by Section 10 (f) of the Act.

8. This Court has no jurisdiction to entertain the petition herein, or grant the prayers thereof, because the certification of representatives duly issued by the Board was pursuant to a proceeding under Section 9 (c) of the Act, a purely fact-finding investigation resulting in no order or compulsion against any one, and reviewable only as expressly provided in Section 9 (d) of the Act, in connection with a cease and desist order issued under Section 10 (c) of said Act. No such cease and desist order has or could have been made in the investigation proceeding which the Board conducted.

9. The legislative history of the Act makes it clear that it was the intention of Congress that certifications by the Board prior to an order made with respect to unfair labor practices should not be subject to judicial review. In its report on the bill, the Senate Committee on Education and Labor stated:

"Section 9 (c) empowers the National Labor Relations Board, whenever a question . . . affecting commerce arises concerning the representation of employees, to conduct an investigation either by secret ballot or otherwise to determine such representatives. In any such investigation, an appropriate hearing must be held.

[fol. 71] "Section 9 (d) makes it absolutely clear that there shall be no right to court review anterior to the holding of an election. An election is the mere determination of a preliminary fact, and in itself has no substantial effect upon the rights of either employers or employees. There is no more reason for court review prior to an election than for court review prior to a hearing. *But if subsequently the Board makes an order predicated upon the election, such as an order to bargain collectively with elected representatives, then the entire election procedure becomes part of the record upon which the order of the Board is based, and is fully reviewable by any aggrieved party in the Federal Courts in the manner provided for in Section 10. And this review would include within its scope the action of the*

Board in determining the appropriate unit for purposes of the election. This provides a complete guarantee against arbitrary action by the Board." (74th Cong., 1st Sess., Senate Report No. 573, p. 14.)

The report of the House Committee on Labor is to the same effect:

"As previously stated in this report, the efficacy of Public Resolution 44 has been substantially impaired by the provision for court review of election orders prior to the holding of the election. Section 9 (d) of the bill makes clear that there is to be no court review prior to the holding of the election, and provides an exclusive, complete, and adequate remedy *whenever an order of the Board made pursuant to Section 10 (c) is based in whole or in part upon facts certified following an election or other investigation pursuant to Section 9 (c).* The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard. Since the certification and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to section 10 (e) or (f), the Board's actions and determinations of fact and law in regard thereto will be subject to *the same court review as is provided for its other determinations under Sections 10 (b) and 10 (c).*" (74th Cong., 1st Sess., House Report No. 1147, p. 23.)

10. Section 9 (d) of the National Labor Relations Act provides that whenever an order involving an unfair labor practice shall be made by the Board under Section 10 (c), based upon facts certified following an investigation under 9 (c), and there is a petition to enforce or review such order made under Section 10 (c) the decree of the Court shall be made and entered on the transcript of the record of the entire proceeding, which shall include the certification and the record of the investigation under 9 (c).

[fol. 72] 11. Section 9 (d) does not provide for the judicial review of the proceedings under 9 (c); Section 9 (d) clearly shows that proceedings undertaken pursuant to Section 9 (c), the type involved herein, may be judicially reviewed only when the Board has issued a cease and desist order in an unfair labor practice case under 10 (c) and furthermore, only when such cease and desist order is based upon

facts certified by the Board pursuant to an investigation under 9 (c).

12. The Board has not instituted any proceeding or issued any cease and desist order against the petitioners, or other parties to the proceedings before it, under Section 10 in respect to any unfair labor practice. Until such order is issued, based upon the proceedings here involved, there can be no jurisdiction in this Court to review.

13. All that the certification of representatives made by the Board under Section 9 (c) amounts to is an announcement or statement of the results of its research and investigation as to what representatives have been designated or selected by the particular employees concerned. Such an announcement or statement is not an order in the judicial sense, or at all. It is but the formal record of the Board's conclusions reached in the exercise of the power of investigation.

Wherefore, the Board respectfully moves that the petition to review and set aside the Board's decision and certification be dismissed.

Robert B. Watts, (M. F. H.), Associate General Counsel for Respondent, National Labor Relations Board, Appearing Specially; Malcolm F. Halliday, Attorney for Respondent, National Labor Relations Board, Appearing Specially.

[fol. 73] [File endorsement omitted.]

[fol. 74] IN UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA

[Title omitted]

MINUTE ENTRY OF ARGUMENT—December 5, 1938

The argument on the motion to dismiss in the above entitled cause was commenced by Mr. Laurence A. Knapp, attorney for respondent, continued by Mr. Joseph A. Padway, attorney for petitioner, and concluded by Mr. Laurence A. Knapp, attorney for respondent.

[fol. 75] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 7257

AMERICAN FEDERATION OF LABOR et al., Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside Order of the National Labor Relations Board

(Argued December 5, 1938. Decided February 27, 1939)

Herbert S. Thatcher and Joseph A. Padway, both of Washington, D. C., for petitioners.

Robert B. Watts and Laurence A. Knapp, both of Washington, D. C., for respondent.

Before Groner, C. J., and Miller and Vinson, JJ.

OPINION

GRONER, C. J.:

International Longshoremen's Association is a labor organization whose members are engaged in longshore work on the Pacific Coast. International Longshoremen's Association Local 38 is a similar organization affiliated with International, and International in turn is affiliated with the American Federation of Labor. In the latter part of September, 1938, petitioner filed its petition in this court to review and set aside an order of the National Labor Relations Board made June 21, 1938. The controversy concerns the rival claims of the American Federation of Labor and the Committee for Industrial Organization (C. I. O.) and their respective affiliates to represent maritime workers in interstate and foreign commerce in some or all of the ports on the Pacific Coast. The dispute arose as the result of the filing by the C. I. O. of a petition asking the Board to hold that the employer unit should embrace the entire West Coast and to certify its affiliate as exclusive bargaining agent. The A. F. of L. answered the petition, denying the Board's power to prescribe a unit larger than a single employer. There were lengthy hearings before the Board at which both parties were represented, and many witnesses examined.

Subsequently, on the 21st of June, the Board made elaborate findings of fact and conclusions of law, and issued its certificate. The decision united in one unit some 200 or more employers operating in different ports from Canada to Mexico and found that C. I. O. organizations represented the majority of the employees of the whole. The employers accepted the certification without question and made a collective bargaining contract in which the C. I. O. was recognized as the exclusive representative of all West Coast long-shore employees. A. F. of L. (and its affiliates) petitioned the Board for a rehearing. The Board adhered to its former decision, and denied the petition. This appeal followed. The Board appeared and filed what it calls a "special appearance," objecting to the jurisdiction of this court to hear the appeal, and moved to dismiss.

[fol. 76] The question in the case is whether the decision appealed from is a "final order" within the terms of the Act.¹ As a preliminary question, the Board argues that petitioner is without any standing to appeal regardless of whether the order is final or not, but we think the language of Section 10(f) of the Act sufficiently answers this contention. It authorizes a review at the instance of "any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought." The right under this section has already been invoked without question by labor unions in a number of cases,² and if the Act should be held to confine the right of review to an employer and to deny it to a representative of the employees, it would create an anomalous situation. We think the fair intendment of the language as well as the purpose of Congress was to provide a judicial review to any aggrieved party where the order is final, without narrowing it in the manner now contended for by the Board. In this view we have a case in which the right, called by the Supreme Court in *Texas & New Orleans Railroad Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 571, a property right, is charged to have been wholly destroyed by the action of the Board.

¹ National Labor Relations Act, 49 Stat. 449, 29 U. S. C. (Supp. IV), secs. 151 et seq.

² See particularly *Consolidated Edison Co., et al. v. National Labor Relations Board, et al.*, and *International Brotherhood of Electrical Workers, et al. v. National Labor Relations Board*, — U. S. — (decided December 5, 1938).

The principal loading and discharging ports on the Pacific Coast are Tacoma, Olympia, Port Angeles, San Francisco, Los Angeles, Seattle, and Portland. There are about 25 smaller ports, and the total number of employees is stated to be in the neighborhood of 13,000. The number of employers varies with the size of the ports, but altogether they total several hundred, and they in turn are represented by some four or five associations of employers, and there are separate employer associations in most of the ports. When the Board's hearings were begun, petitioner represented a majority of the employees in one or more of the ports and likewise a majority of the employees of a number of separate employers. Petitioner's grievance grows out of the fact that in ascertaining the appropriate representative of the men the Board ignored the identity of separate employers or of separate ports and extended the employer unit to include the entire Pacific Coast, with the result that the rival union was designated and certified as the sole representative—in consequence of which its own union was "put out of business" and its members obliged to become members of its rival and deal with the employer either exclusively through it or not at all.³ In short, that by reason of the [fol. 77] Board's decision to enlarge the "unit" to embrace about 25 separate ports and the acceptance of its decision by the employers, a situation has arisen as the result of which a so-called closed shop contract may be entered into which will require petitioner's members, even where they predominate in a particular locality or business, to join the

³ Sec. 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

other union or possibly be displaced from their employment by members of that union.

Enough has been said to show that we have here a controversy between two national labor organizations, both of which have appealed to the Board to resolve their conflicting rights and the rights of their members, and one of which claims that the unlawful action of the Board in the designation of an employer unit beyond the terms of the Act has destroyed its property right and the property rights of its members and that, unless it can obtain a review by appeal to this court or some other Circuit Court of Appeals, it will be wholly without redress of any kind.

The Board denies jurisdiction on the ground that the action taken by it was the result of proceedings investigatory in character; that the Act in the circumstances did not contemplate the issuance of any order, final or otherwise; that its finding and decision do not require petitioner to do anything or to refrain from doing anything; and that petitioner is, therefore, not a person aggrieved nor the decision appealed from a final order which will confer jurisdiction upon a court.

Petitioner concedes that it is not entitled to a judicial review unless there was a final order, but insists that in the facts narrated above the decision and the so-called certificate entered thereon constitute a final order; that its effect is to completely foreclose and determine its legal rights and to leave it without redress of any kind unless this review is open to it.

The Supreme Court has held in a number of cases that mere preliminary or procedural orders of an administrative body are not reviewable by the Circuit Courts of Appeals, and this brings us to our starting point, namely, whether what happened here was in effect a final order commanding or directing something to be done. In the case of *Mallory Coal Company v. National Bituminous Coal Commission*, 99 F. 2d 399, we endeavored to review this question in the light of the decisions of the Supreme Court and to lay down a test as a guide to ourselves in determining the question. We said:

Underlying all these tests of appellate jurisdiction is the fundamental requirement that the person seeking review must first have exhausted his administrative remedy. If the order in the particular case is definitive rather than preliminary or procedural; if the order operates particularly

upon the person seeking review, rather than upon the world generally or upon a large group of interested persons; if the order was entered in a proceeding, adversary in character, after notice given, with a hearing at which witnesses were examined and points of law argued, and in which findings of fact were made; if a petition for rehearing was filed urging, upon the Commission, the objection to the order now urged for the consideration of the court; each of these circumstances—and more particularly all of them together—may indicate that the administrative remedy has been exhausted and that it is time for judicial review. Until that time comes, the matter should remain in the control of the administrative agency.

[fol. 78] Examined in the light of this formula, the decision of the Board in the case in hand contains all the elements we believed to be necessary to make it reviewable under the statute. The proceeding out of which it emerged was neither preliminary nor incident to another proceeding. It concerned a controversy affecting the vital interests of two rival unions. It was begun and concluded for the purpose of settling the dispute. It was authorized by the statute to be made and so far as concerned the unions it was final. Its actual effect was to eject petitioner from the controversy. The suggestion that petitioner might have induced the employer to reject the finding and subject himself to an unfair labor proceeding and thus secure a court review, is wholly beyond the point. Petitioner had no control of the employer, and here the petition shows that the employer, acting within the spirit as well as the letter of the Act, promptly obeyed the Board's decision and entered into a contract in accordance with its terms. So that what happened was precisely what in a proper case the Act designed should happen—but, as we have seen, with the result that petitioner, in the localities in which its members constituted a majority, was—if the Board's decision as to the representative unit is valid—deprived of the very thing which petitioner insists it was the purpose of Congress to secure and protect. We had thought that whether an order or decree is final is not to be determined by the name which the court or board gives it but should be decided on consideration of its essence, its substance, its intrinsic nature. Or in other words—what is done by it. The decision in question undoubtedly operated particularly upon petitioner. It was an adversary party.

The decision and the refusal to rehear closed the controversy and completely exhausted petitioner's administrative remedies. But, notwithstanding all of this, we think we are bound to hold that the "decision" was not an "order" as that term is defined in *Shannahan v. United States*, 303 U. S. 596, and in *Shields v. Utah Idaho Central Railroad Co.*, — U. S. — (decided December 5, 1938).

In the *Shannahan* case the controversy involved the right of an electric railroad to be exempt from the scope of the Railway Labor Act under a proviso excluding street, inter-urban, or suburban railways. The Act authorized and directed the Interstate Commerce Commission upon request of the Mediation Board to "determine" whether the line fell within the terms of the proviso. The Commission determined it did not. An appeal was taken under the provisions of the Urgent Deficiencies Act to set aside the decision. The Commission challenged jurisdiction of the court on the ground that the "determination" of the Commission was not an order, and on hearing it was so decided and the bill dismissed. On appeal to the Supreme Court the decision was affirmed, and it was said the "determination" was not an order at all and was no more than a "decision on a controverted matter." And in *Shields v. Utah Idaho Central Railroad Co.*, which shortly followed, the Court said a "determination" or "decision" by an administrative body may be definitive, may be legal, and may be binding as to all parties concerned, but it is still not an "order" if it does not also command or direct a particular thing to be done⁴—and, because it is not an order, it is not appealable and is subject to challenge and judicial review only by bill in equity.

Accepting, as we must, this restrictive definition and applying it to the case at hand, we hold that, though the decision here was required by the Act to be made and to be made on the evidence and argument after judicial hearing, and though it was definitive, adversary, binding, final, and in this case struck at the very roots of petitioner's union and destroyed its effectiveness in a large geographical area of the Nation, it was not an order because the Act did not require it to be made in the language of command, and hence is reviewable—as was held in *Shields* case, *supra*, and in *Utah Fuel Co. v. National Bituminous Coal Commission*,

⁴ As was said in the *Shannahan* case, p. 599.

— U. S. — (decided Jan. 30, 1939)—only in an independent suit in equity commenced in a District Court.
Petition dismissed.

[fol. 80] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1939

No. 7257

AMERICAN FEDERATION OF LABOR, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AND PACIFIC COAST DISTRICT INTERNATIONAL LONGSHOREMEN'S ASSOCIATION No. 38, Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD

JUDGMENT—February 27, 1939

Petition to review and set aside order of the National Labor Relations Board.

This cause came on to be heard on the petition to review and set aside order of the National Labor Relations Board, and respondent's motion to dismiss, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the petition in this cause be, and it is hereby, dismissed.

Per Mr. Chief Justice Groner.

[fol. 81] Memorandum: Petition for leave to file petition for rehearing, time having expired, Filed May 20, 1939.

[fol. 82] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER DENYING LEAVE TO FILE PETITION FOR REHEARING—
Filed May 29, 1939

Per CURIAM:

Petitioners' application, filed May 20, 1939, calls our attention to a decision of the United States Supreme Court

in *Rochester Telephone Corporation v. United States of America and Federal Communications Commission* (No. 481, decided April 17, 1939), and insist that it sustains our jurisdiction to hear the instant case on its merits. Petitioners likewise refer to a recent decision of the Sixth Circuit in *Libbey-Owens-Ford Glass Co. v. National Labor Relations Board* to the same effect.

Our opinion was handed down on February 27, 1939, and our judgment issued on March 17, 1939. Our January Term expired on April 2, 1939, and the present application was filed subsequent to the last-mentioned date and when we have no further power over our judgment. Because of this fact we are without power to reconsider our former decision, and leave to file petition for rehearing is for this reason denied.

It is so ordered this 23d day of May, 1939.

[fol. 83]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed May 24, 1939

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

1. The record in the Court of Appeals, (including petition for review, together with amendment thereto, and respondent's Answer and Motion to Dismiss.)
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment or decree.
5. Clerk's entry showing filing of Petition for Permission to file Petition to Rehear.
6. Decree of the Court dismissing said Petition for Permission.

7. This designation.
8. Clerk's certificate.

Joseph A. Padway, Herbert S. Thatcher, Attorneys
for Petitioners.

Copy received May 24, 1939.

Robert Watts, Assoc. Gen'l Counsel, N. L. R. B.

[fol. 84]. Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

(4254)